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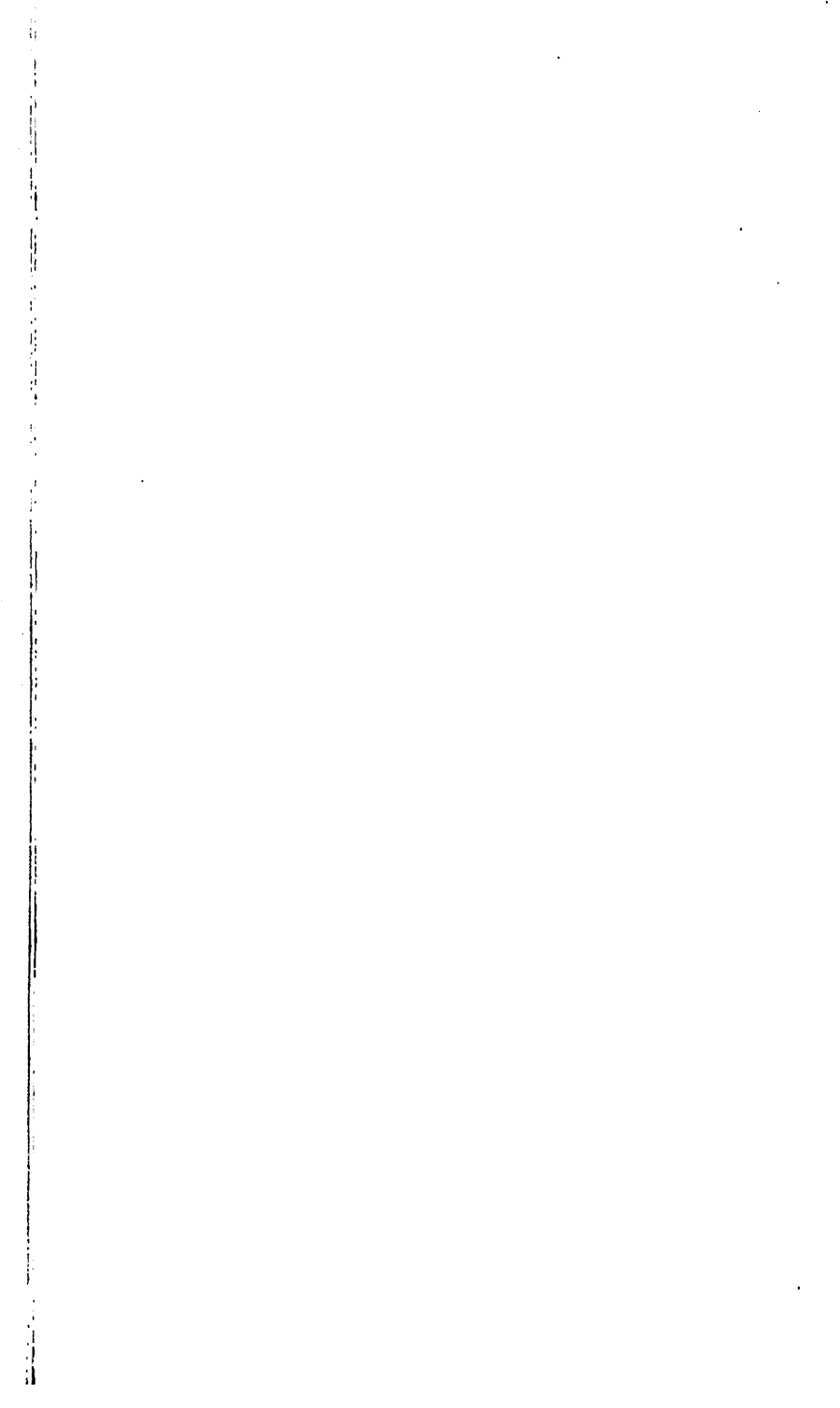
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# AN INQUIRY

INTO THE

ALLEGED TENDENCY

OF THE

SEPARATION OF CONYICTS,

ONE FROM THE OTHER,

TO PRODUCE

DISEASE AND DERANGEMENT.

*Fredrick Adolphus Packard*

BY A CITIZEN OF PENNSYLVANIA.

"THE SEPARATION OF ONE PRISONER FROM ANOTHER IS THE ONLY SOUND BASIS ON WHICH A REFORMATORY DISCIPLINE CAN BE ESTABLISHED WITH ANY HOPE OF SUCCESS."—[*Fifth Report of the Commissioners of Pentonville Prison.*]

IN HER CONFERENCE WITH THE MAGISTRATES AT EDINBURGH SHE (MRS. FRY) STATED, THAT "CONFINEMENT, WHICH SECLUDED FROM THE VICIOUS, BUT ALLOWED OF FREQUENT INTERCOURSE WITH SOBER AND WELL-EDUCATED PERSONS, WOULD HAVE BEEN, IN HER VIEW, PERFECT."—[*Life of Mrs. Fry, Am. Edit., Vol. II, p. 304.*]



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# AN INQUIRY, &c.

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## SECTION I.

### THE PRESENT POSTURE OF THE QUESTION.

THE *North American Review* thinks that "prison discipline has been so carefully studied during the past fifty years, and so many experiments have been made in it, both in Europe and in this country, their results being diligently watched and published, that its general principles ought, by this time, to be well known and established. Most of them are so. A great body of facts has been collected, and most of the conclusions drawn from them, have commanded universal consent."\*

\* \* \* "Here is absolutely the whole question—social or solitary labor by day—which is the better? In this country we have had excellent prisons, conducted on both these plans for at least seventeen years; and the results ought to show, either that one should be decidedly preferred to the other, or that the two are almost equally good, *so that the question of preference between them is an idle one, and may well be dismissed entirely.*"†

Whether the sentence we have italicised is intended to cover the entire alternative, or only a branch of it, is not clear; but in either case, the author has evidently jumped before he came to the stile. "The question of preference" is still an open one, involving very important individual and social interests. We

\* *North American Review*, vol. lxvi. No. 138, p. 145.    † *Ibid.* 147.

are at no loss to conceive, however, that such an opinion as the reviewer expresses, may be entertained by intelligent persons, whose reading and observation have been chiefly on one side, and, withal, by no means systematic or continuous. They readily adopt the opinions of any plausible or reputable writer, whose work they have last read, and are "separatists" or "socialists," upon the principle of always saying "ditto to Mr. Burke."

"Well, upon my word," exclaims a citizen of Boston, "if here is not somebody out again on Prison Discipline! I really thought that vexed and vexatious question had been put to rest long ago, and that every body had become fully satisfied that shutting prisoners up, one by one, all alone, makes them crazy, as a matter of course, if it does not, indeed, kill them outright. I am sure Mr. *Gray's* book shows clearly enough the dreadful effects of such treatment, and it has never been answered, just because it is unanswerable."

"Do tell me," says a citizen of Philadelphia, upon seeing the same pamphlet, "if there is an intelligent person left to harp upon that old string about the dangers of separate imprisonment! I am sure it is not long since I saw a pamphlet written by a Mr. *Sumner*, (I think it was,) which declared, in staring capitals, that the separate system had triumphed in Europe, and was in a fair way to triumph all over the world."

Both these soliloquys are premature. Questions of this kind are not to be settled in a breath, nor, indeed, in "seventeen years." They rather belong to an age. They have a wider scope, and affect larger and higher interests than superficial inquirers suppose.

To show how far either system is from "commanding universal consent," or rather to show how far the espousers of them are from harmony of views, we cite a passage or two from late treatises; and for better contrast, put them in parallel columns.

"We cannot believe that the separate system will be allowed to continue in practice, even in Pennsylvania. Better that the walls of all

"For our own part, most of us having originally formed opinions unfavourable to the system of separation by day, as well as by night, we

the prisons in that State should be demolished, and the doors of every court be closed, than that this outrage upon humanity and justice should any longer be tolerated. Better that society should suffer from a general saturnalia of crime, than to attempt to repress it by such inhuman means."—[*North Amer. Review*, No. 138—p. 176.]

"From the experience of our own country, hitherto, it appears that the system of constant separation, as established here, even when administered with the utmost humanity, produces so many cases of insanity and of death, as to indicate most clearly that its general tendency is to enfeeble the body and mind."—[*Prison Discipline in America*, by F. C. Gray—p. 181.]

"What advantages, real or imaginary, can be brought forward as an excuse for a system which smites from one-sixth to one-tenth of all its victims with insanity?—[*Ch. Exam.*, No. 146—p. 283.]

deem it our duty to declare that experience has proved we had fallen into error; and that we consider the system of separate imprisonment, accompanied by labour, reading, religious services, and daily walks—the system, in short, as it is practiced at Bordeaux—as one of the reforms which reflect the greatest honour on our age."—[*Reading Gaol Visiting Committee's Report*, as cited by *Field*, vol. 2—p. 375.]

"To the facts which this report will be found to contain, the Board of Inspectors, unconscious of any thing to bias their judgment, can but add the expression of their unanimous belief in its (the separate system) superiority over all other systems of penitentiary punishment."—[*Nineteenth Rep. of Inspectors of E. S. P.*, 1848—p. 7.]

"Every government which, in the actual state of society and of the progress of social science, adopts any other than the separate system, will expose itself to the necessity of having, before long, to reconstruct its prisons."—[*Count Gasparin*, as quoted in *George Sumner's Letter to the Mayor of Boston*, p. 22.]

If the following pages shall serve to abridge (though but a little) the wide chasm which these double columns reveal, and to bring into union or co-operation those who are honestly seeking the same good end, their chief intent will be answered.

In attempting to effect this desirable purpose, we are fully aware how few will interest themselves in the inquiry—On which side lies the right? But there are quite enough of this class, we think, to make it important that correct views should be entertained, and that the just claims of conflicting systems should be understood and appreciated.

It is well known, that the *Philadelphia Society for the Alleviation of the Miseries of Public Prisons*, has been the early and earnest advocate of the plan of the absolute separation of convicts from each other, and we believe their confidence in the soundness, safety and eligibility of that principle has not only

never been shaken, but has been uniformly strengthened by the very arguments employed, or rather the course taken to bring it into disrepute. Regarding that principle as essential to any system of prison discipline, that makes the reformation of the convict (or even his not being made, in a majority of cases, worse by his punishment) a primary object; and believing, as we firmly do, that the discipline of a well regulated prison, on the separate plan, is well fitted to reform many, and to preserve those whom it may not reform from deterioration while under sentence—we feel constrained to expose the groundlessness of some of the popular objections which are still urged to it, and to correct erroneous opinions of its tendency, however eloquently or ingeniously maintained. This is our apology for the present publication.

It is not our purpose to take up Mr. *Gray's* pamphlet or the reviews of it, for methodical examination. We must content ourselves with a few general considerations, to show that they present no reasons to the friends and advocates of total separation to distrust the soundness of their principle, or to weaken their faith in the decided superiority of the cellular or separating system, over any and all others.



## SECTION II.

### BRIEF HISTORY OF THE CONTROVERSY.

THE recent appearance of a pamphlet of two hundred and odd pages, from a learned counsellor of the "Bay State" bar, seconded by elaborate auxiliary articles in the *North American Review* for January 1848, and the *Christian Examiner* for the following month, betokens the earnest interest which has been excited on the subject of prison discipline. Perhaps we owe the productions we have just named, rather to local sympathies; and, indeed, the two latter treatises sustain to the first,

the same relation that those who clench the nail on the one side bear to him who drives it. In due time we shall see that from the unsoundness of the timber, the strength of the nailer and clencher is spent for nought.

To understand the case at all, a brief sketch of some preliminary events is quite indispensable.

In June 1825, a society was organized in Boston, "for the improvement of public prisons." It was a very seasonable movement—for so great at that time had the abuses of the State prison at Charlestown become, as to extort from nature and humanity a loud and bitter cry for reform. It was not unusual, we are told, for sixteen convicts to be locked up together by themselves, in one cell, for the night, with lights, cards, musical instruments and a supply of intoxicating liquors. "In these committee-rooms of Satan, the vilest schemes of profligacy were devised, and the grossest acts of depravity perpetrated; while confederacies and combinations were formed by the practised veteran with the novice in crime." Such was the picture drawn by the Executive of the State and presented to the legislature in January 1826—and its most revolting features he attributed to the want of apartments for the separate confinement of the convicts—in other words, *to association*. In the same breath he proposed the prison then in use at Auburn, N. Y., as "the best model of a prison structure, inasmuch as it secures the most entire solitude of person(!), with an effectual arrangement for detecting the slightest attempt at correspondence by conversation." As the result of all this, at the then current session of the legislature, a law was passed ordering the erection of a new building, within the limits of the prison-yard at Charlestown, adapted to the *separate confinement* of three hundred convicts, "upon such plan as shall be approved," &c.

In the first annual report of the society, (May 1826,) the prison at Charlestown was compared to the model work-house of the State at Auburn) and it had then been



long waiting to see, a prison which may be made a model for imitation," (p. 38). And we must all admit, that when compared with the condition of the Walnut street prison in Philadelphia, at that period, or of the State prison in Charlestown, as just described, it was worthy of no ordinary commendation.

Thus early and closely was Massachusetts wedded (whether she would or not) to the Auburn prison as a model. With the conviction of its vast superiority, which some of her citizens were led to entertain, the desire to extend a knowledge of its principles and bring them into universal adoption, was quite natural and philanthropic. For, as Mr. Gray sensibly remarks, (though in a very different connection,) "when a State fully and finally adopts a new system without reserve, as its own, and provides by law for its general establishment, thus proclaiming its unqualified approbation of it, officers will naturally and properly be appointed to administer it, who entertain and express the same sentiments. Such men and the State itself, will be very slow to see, and very slow to believe any thing which evinces the failure of their system. Without imputing any wrong motive to them, it cannot be that they should look, without the utmost reluctance, upon any event which should be understood to imply, that the system, for the success of which they have thus publicly made themselves responsible, was either unwisely chosen or ill administered."\*

Precisely such an "event" occurred at that very juncture. "The Philadelphia Society for the alleviation of the miseries of public prisons," which had then been actively employed for half a century or more, in the same field of benevolent effort, and had been for twenty-five years urging the plan of an "individual separation" of the convicts as the essential element of prison discipline, were anxiously watching the course of legislation, and the whole subject was, at that time, fairly before the Assembly of Pennsylvania. The act authorizing the erection of the Eastern State Penitentiary, had been passed in

\* Prison Discipline in America, p. 87.

1821. It fully recognized the principle of individual separation as indispensable, but in what precise manner, or with what limitations it should be employed, was not prescribed nor settled.

Of course, here was an inviting field for discussion which the Boston society did not overlook nor cultivate without success; for in March 1826, a committee was appointed to investigate the whole subject, who reported in January 1828 in favor of the Auburn plan of social labor by day, and separate confinement at night. Their election, however, was not between the Auburn and the separate system, as we know them, but between the Auburn system and strict solitude without labor. The principle finally adopted by the legislature was that which has ever since prevailed in Pennsylvania, viz: constant individual separation from each other, with labor, the restriction being limited entirely to convict association. The Auburn plan was rejected because it did not provide for constant separation. The solitary plan was rejected because it did not provide for labor. The separate system combines these two elements, (separation and labor) and was for that reason adopted.\*

From that period to the present the working and results of the two systems have been the subject of constant and severe scrutiny; and in the progress of the discussion, the wise men and philanthropists, not only of our country but of Europe and Asia, have been drawn in, until prison discipline has grown into such magnitude and importance, that it may be regarded as really and properly a *science*.

The reports of the Boston Society, prepared with great labor and published and circulated at no little expense, contained much valuable information; but, unfortunately, they fell into a vein of acrimonious animadversion upon the Eastern

\* Mr. Gray (p. 124,) gives currency to a gross misconception, by quoting from a recent volume, (*Rationale of Crime*,) a passage in which it is alleged that the separate system was adopted "because it would inflict a greater degree of punishment than could be procured under the associate system!" We should think such a palpably erroneous statement unworthy of notice but for so respectable an endorsement.

State Penitentiary. Making their appearance year after year and circulated with unwearied pains, here and abroad, and in the absence of any other public source of information, these reports were regarded as the voice of the American people.

In their eagerness to keep the Auburn system at a model altitude, and to make the idea of separation quite intolerable, it is not strange that the reports overshot the mark, and drew so revolting a picture as to excite surprise and curiosity, rather than opposition, among those who were strangers to the merits of the case. We say the *case*, rather than the *controversy*, for it was all on the Auburn side.

It is an ill wind that blows nobody good. The reports stirred up a spirit of inquiry on both shores of the Atlantic, and it was but a few years after the Charlestown prison had been re-modelled, and the Eastern State Penitentiary well established, that the governments of Europe determined to come among us and look with their own eyes. Thereupon a series of embassies commenced, composed of the most judicious and well informed men on such subjects, that could be deputed for the purpose. They followed each other at considerable intervals of time—they represented different governments, and were entirely independent of each other in the nature and manner of their inquiries. Some of them were prepossessed in favor of the Auburn system, and all of them explored personally and thoroughly every section of the field, and their reports were uniformly in favor of the separate system, as adopted in the Eastern State Penitentiary.\*

The effect of the emphatic and concurrent testimony of these several commissions to the superiority of the separate over the associate system, is seen in the enactments of their respective governments, which took place upon their return, and in the tone of foreign publications on the general subject.†

At length it was clearly discerned by our own citizens, that

\* The history of these commissions, and the substance of their reports to their respective governments, have been published, and are accessible to such as desire to examine them.

† Mr. Gray, we perceive, is quite inclined to look upon foreign writers and legisla-

the separate system was either unduly esteemed abroad, or quite misrepresented at home. The reports of the Boston Society had been brought into review, and subjected to severe animadversion in the legislative halls and in the public journals of Europe, and its friends and patrons were naturally led to inquire what position they occupied, *as a society*, in relation to these reports.

It will be remembered that, during all this long interval of twenty years, in which the advocates of congregate or Auburn prisons, had been so diligently at work, the separate system was without any permanent medium of communication with the public, and was, of course, placed at great disadvantage; but its friends confidently relied on the soundness of the principle to sustain the system, rather than upon the laudation of the system to give currency to the principle.

For the same reason, it is not surprising, that after listening for the like period of twenty years to the earnest condemnation of that system, and an equally earnest advocacy of the other, the people, living in the focus of such an influence, should be shocked at the idea of erecting a separate prison within a stone's cast of the Boston Society's rooms! Yet such a proposition was seriously entertained; and it was found, not only that some very wise and humane men were quite inclined to try it, but serious doubts were then, and had been before entertained, touching the correctness of the impressions made by the Society's reports. Indeed, so definite had these doubts become, that at the Twentieth annual meeting of the Society, held at Boston, May 27 1845, a member was bold enough to suggest a query, whether some of the statements made in the draft of a report then presented, could be sustained. The subject was referred to a committee of eight, to inquire whether any modifications of the report were necessary, previous to its publication. The committee was "authorized, in the name of the Society, to ask permission to examine the Phila-

tors as speculatists, if not as barbarians. (See pp. 131—135.) He thinks we know more than they do, and the Chinese think they know more than either of us. Facts, like pictures, constitute a universal language.

delphia and other prisons, and to incorporate a report of their proceedings in the annual report of the Society." This movement arrested the publication of the Twentieth annual report, and delayed it for the space of two years.

From the proceedings at the next meeting, (May 26 1846,) it appears that, during the interval, two reports had been prepared, and placed on the Society's files by the committee appointed the year before, and an attempt was made to get them both before the public eye, but it failed. The Twentieth report, and the reports of a Select Committee thereon, being yet undisposed of, the Twenty-first report was presented. The "chamber of imagery" had now been so far exposed as to increase the boldness of inquirers; and a resolution was introduced and passed, appointing another committee, "to examine and review the reports and proceedings of the Society, and to see whether the same could be in any way varied and amended, so as to extend the usefulness of the Society." And thus the Twenty-first report was suspended by the side of its fellow.

The Twenty-second annual meeting took place May 25, 1847. The draft of an annual report being presented, a motion was made and prevailed to lay it upon the table, for the purpose of taking up a report presented by the committee appointed the year before. At this juncture there were before the Society three successive annual reports, and (if we mistake not) three reports of select committees, awaiting their doom. The report of the committee of 1846 was read, and led to a long and earnest debate. The occasion of a public anniversary proved far too narrow a theatre for the discussion of the subject. A series of popular meetings succeeded, and were attended, evening after evening, by dense crowds of interested inquirers and eager listeners. At the close of the last of them the Twenty-second report was referred to the Board of Managers to be printed.

There are many circumstances connected with the progress of this controversy in Boston, which the friends of prison reform (let them espouse whatever system they may) must regard

with unfeigned regret.\* Those who are familiar with them, will be able to judge what degree of faith is to be reposed in the documents which occasioned the debate.

During the pendency of this animated discussion—to wit, in 1846,—the municipal authorities of Boston were summoned to decide which principle should be adopted, in the erection of a city prison—a question not new to some of its worthy citizens, as we have already intimated—and it so happened, that a Massachusetts gentleman, then residing in Paris,† and in good esteem at home and abroad, having probably been informed of the agitation of the public mind on the subject, addressed a letter to the Mayor of that city, expressing his surprise that any doubt should be felt in the selection, when a preference for the separate system had been so decidedly and repeatedly expressed, by the most enlightened and intelligent governments of Europe. The strong and emphatic commendation of the separate system, which this letter contained, could not be regarded as in any degree influenced by party or local considerations, as the author had not participated at all in the controversy.

This letter was published by the city authorities of Boston, and, in connection with the systematic efforts which were at the same time in progress, to bring the whole subject before the tribunal of public opinion, excited unusual interest.

These various occurrences evidently placed the associate system, in an intelligent community, on unsafe ground. Accustomed, as its friends had been, to keep exclusive possession of the ears, if not of the judgments of the citizens, it was in the highest degree awkward and embarrassing to have the soundness of a theory questioned, to which they were committed so early, and for which they had done battle so manfully—as manfully, at least, as men could do, with no foe in sight. It

\* Those who, for a good purpose, are curious to know what they were, and how the doings of the Committee terminated, are referred to the "Report of a Minority of the Special Committee of the Boston Prison Discipline Society, appointed at the Annual Meeting, May 27, 1845." Ticknor & Co., Boston: 1846. pp. 90.

† George Sumner, Esq.

was a still greater surprise upon them, when their assertions and assumptions were discredited, and their hold upon public confidence threatened with dissolution.

At this critical moment, a distinguished member of the Suffolk bar, as we have already said, generously offered his services as an advocate of association, and furnished the public with a pamphlet of two hundred pages, with the imposing and comprehensive title of "Prison Discipline in America," and he does his work with an appearance of candour and of familiarity with the whole ground, that is really quite "taking." He reminds us of some impatient judge, who comes to a case that has been long upon the docket, and determines, *per fas aut nefas*, to have it off; and walking over the heads of lawyers and witnesses, he "sums up" for both sides, gives the case to the jury, and retires to his lodgings for refreshment and repose. It is whispered among the bystanders that he evidently mistook his calling, and went upon the bench with none of the attributes of a judge, save the wig and robes.

The reader will not suppose, however, that this was Mr. Gray's first appearance in the controversy. During the pendency of the popular debate in the Tremont Temple, in May 1847, (as he is reported in the cotemporary journals,) he defended the position taken by the (Boston) Prison Discipline Society, in its opposition to the "solitary" system. He presented, as it is said, "a variety of facts, and a mass of statistical information, designed to show the ill-adaptation of that system to the highest purposes of prison discipline, and its tendency to undermine the bodily health, the mental powers, and even the reason of the prisoners subjected to its operation." In reference to the opinions of the foreign delegates, (from France and Germany,) who visited our prisons some years ago, and expressed their preference for the Pennsylvania system, Mr. Gray said, "they came to the Charlestown prison with their minds made up in favor of the Pennsylvania system. *He knew this from personal conversation with the gentlemen.*"

It is, of course, out of our power to know positively to which of the individuals composing the several delegations the gentle-

man alluded. But it is singular, that one of the most influential deputations from the French government, was that composed of Messrs. *Blouet, De Metz, Davaux, and Varel*; and in a letter addressed by M. De Metz, to one of the departments of his government, he says: "I quitted France, strongly prepossessed AGAINST the Pennsylvania system; but since I have seen the system in operation, my opinion has undergone a total change; and it is that very system which my conscience now compels me to put forward and contend for." And the other members of the commission declare, that "their convictions on the subject are the same with those of M. De Metz, and are carefully set forth in his report."

If reference is intended to the anterior mission of Messrs. *De Tocqueville and Beaumont*, it will be found quite as difficult to reconcile Mr. Gray's impressions with the integrity or consistency of those gentlemen.

In his zeal and sympathy, as well as in his apprehension of the rights and claims of the opposite party, Mr. Gray plays the lawyer, and knows nobody but his client. We think much better of his professional acumen, however, than to suppose that the present pamphlet is a fair specimen of his prudence or powers. He certainly never would venture to go to a jury with so little knowledge of the weight of his own evidence, or with so superficial an acquaintance with the merits of the other side.

The *North American Review* thinks it high time the controversy was ended. It recommends Mr. G. to the public as "a cautious inquirer, cool, methodical—rigid in his habits of investigation—a chaste writer, and an excellent, inexorable logician—the very man to eliminate all false issues; so that he must be bold indeed, who will impugn any of his statements."—(pp. 148-9.)

And the *Christian Examiner*, presenting itself in due time, declares the pamphlet to be the "most able argument against the separate system, it has ever seen, and the most valuable work on the subject that has ever appeared in the country." This last reviewer seems to have been puzzled, however, to determine whether the lawyer or the judge is most conspicuous in it, as



he was "at first inclined to consider it a very strong and skillful argument, rather than a comprehensive judicial summary," as he finds it to be. (p. 273.) If there were a "mutual admiration society" within the circle in which these gentlemen move, we should presume their affinities to it would be almost instinctive.

Now, though we cannot concede any such commanding position to the author of the pamphlet as he assumes, and as his friends claim for him, we can readily account for, and willingly extenuate the errors into which he and they have fallen. They have always lived within cannon-shot of the Charlestown prison. Whatever there is in local partialities, in personal acquaintance with the resident officers, and in a familiarity with the general history, discipline and arrangements of that penitentiary, will be found to have its natural effect in determining their minds in favor of a "home institution." And if we add to this the consideration of their intimate social relations with those who have steadily sustained the views and operations of the "Prison Discipline Society," and the interest which they must of course feel in the success of a cause in which their neighbours and friends have embarked with so much and such laudable zeal, we shall see good cause for care and discrimination in receiving their statements, or yielding to their arguments, however earnest or specious. And still further, if we call to mind that the people of Boston were so recently excited by a long continued, heated, popular discussion of this subject, and that in truth a very severe contest has been maintained, and is now pending between citizens of that city, who with equal opportunities of observation, have arrived at opposite results in respect to the point at issue, we must not wonder that some Boston writers, reviewers and orators, should be betrayed into the errors and infirmities of partizans.

A patient examination of the following pages will, we trust, convince our readers that there are other and still weightier reasons why they should decline to commit themselves to the views of the advocates of association, if they have no better foundation than Mr. Gray's pamphlet discloses.

## SECTION III.

## OF SOME OF THE CAUSES WHICH HAVE OPERATED TO PROTRACT THE CONTROVERSY.

THE controversy respecting the comparative eligibility of the separate and associate systems of *prison discipline*, owes much of its sharpness and protraction:

(1.) To conflicting views of the end of punishment.

(2.) To the use of the same terms, with a different meaning; and,

(3.) To the absence of a common standard or criterion by which the accuracy and relative importance of results can be determined.

1. All prison discipline, being a restraint upon liberty, is in the nature of punishment and of course must be adapted to answer some specific end. But if there is a wide diversity of views as to what that end is, we must expect a corresponding diversity of views as to the means, (*i. e.* the method of discipline) by which it is to be attained. If it is intended to rid the world of the personal presence of a bad man, irrespective of all questions of right and wrong, justice or injustice, the best way is to kill him outright. If the design is only to suspend a rogue's operations for a limited period, without any other or further regard to the effect on himself or others, we need only inquire for a cheap plan of safe custody. If it is intended to make him pay the expenses of his keeping, and remunerate the public for its various losses on his account, reference will be had to the lucrativeness of the employment to which he shall be put, and the conveniences of pursuing it most advantageously. But should even a faint hope of reforming the prisoner be entertained, then the attention would be chiefly directed to the arrangements and agencies which will be most likely to counteract his evil habits and propensities, and to subject his moral nature to the best influences of which it is susceptible.

"Punishments are inflicted," says Sir T. Fowell Buxton,

"that crimes may be prevented by the reformation of the criminal. This may be accomplished. The prisoner being SEPARATED from his former associates, ceases to think as they think; he has time for recollection and repentance, and SECLUSION will humble the most haughty, and often reform the most abandoned."\* Reformation being the end sought, separation is the way to attain it.

Some hold that "the only object and the only justification of punishment by law, is its tendency to promote the security of society, by preventing, as far as may be, the recurrence of crimes."† A late popular writer declares that "society is not bound to reform the convict for his own sake. No one who has committed a grave offence against his fellow beings, can call upon them, not merely to support him, but to find a cure for his hardness of heart and habits of self-indulgence, which have betrayed him into sin."‡ And, as if there were danger that society might, after all, be betrayed into the weakness of philanthropy in its dealings with delinquents—he informs us that when it does undertake to draw evil doers out of the abyss of wickedness and infamy, into which they have plunged themselves by their own act," it is "from a regard to its own interests."§ Whatever benevolent emotions may be stirred towards the miserable convict in the breast of individuals, the State has nothing to do with them. Its sole object is *self-protection*. This is the doctrine. Yet the iron-hearted State erects the penitentiary and prescribes the discipline—and whatever consideration is given to the moral state and prospects of the convict, must essentially affect the construction of the edifice, its internal economy and police, and the duties and qualifications of its officers, which are all State affairs.

"Save the life and the reason of the convict first, and you may talk about reforming him and protecting society against crime afterwards,"|| as if the very process of reformation were

\* Memoir of T. F. Buxton, 6th edition, p. 161.

† Prison Discipline in America, p. 62.

‡ Review of Mr. Gray's pamphlet in North American Review, Jan. 1848, p. 150.

§ Ibid.

|| Ibid, p. 153.

not directly conducive to the preservation and improvement of both life and reason.

"All writers upon the subject of penal laws," says Lord Brougham, "have laid it down in the outset of their tractates, that the only end of punishment is to teach others by example, and to prevent the criminal himself from repeating his offences. But they forget the second head of their discourse almost as soon as they have laid it down. None of them, so far as I am aware, contemplate the care of these convicts when they return from transportation, or are discharged from imprisonment; and yet to one or the other of these classes belong by far the greater proportion of all who are sentenced."\*

Until this cardinal point, viz., the true *end* of penal discipline is definitively settled,—a controversy about the *mode* is bootless and must be interminable.

2. It is equally important that the terms by which different processes of penal suffering are designated, should be fixed and uniform in their meaning. They are now exceedingly vague, and are used with entirely different apprehension of their force. Separation is a prominent feature of the congregate or social discipline—and association is largely employed in the separate system. Solitude is also common to both. Indeed the points of similarity between the two systems are by no means few nor unimportant. If the terms by which their peculiarities are expressed were accurately defined, and if they were to be used always in their accepted sense, the friends and advocates of the conflicting schemes would, peradventure, find themselves much nearer neighbors, at least in theory, than they are now supposed to be.

3. The alleged results of different penal institutions are so loosely stated, or stated upon such diverse principles as to render any comparison of them quite unsafe, as a basis of opinion, and much more so as a basis of legislation.

The health statistics of two prisons, for example, may be

\* Lord Brougham's letter to Lord Lyndhurst, on Criminal Police, &c., pp. 18, 19. (Ridgway, London, 1847.)

prepared with equal fidelity and stated with equal accuracy, and yet the mode of practice, the professional peculiarities, or even the humor or caprice of the attending physicians, respectively, may be such as to make any comparison of their tables perfectly fallacious. Still more forcibly may this remark be applied to the mental condition of a group of prisoners, inasmuch as the rules of judging are so much more vague and arbitrary in this than in the former case; so that appearances which would be regarded, in one prison, as constituting a well-developed case of insanity, in another would hardly excuse a convict from his daily task, or exempt him from punishment, if he were complained of for a fit of perverseness, or for a trivial misdemeanor. It is obvious, therefore, that whoever rests his faith in the eligibility of this or that system, on returns so indefinite and variable as these, is liable to be deceived. To ensure a concurrence of views on such a subject, even among those who are equally intelligent, upright, and unprejudiced, it is indispensable that they should have the same class of facts before them—that they should use terms with like intent and meaning, and that the principles on which they form a judgment should be alike understood and applied.

If the views we have advanced are substantially sound, it follows that any comparison instituted between two penal institutions, established on opposite plans, with a view to show the defects or excellencies of either, is of no value, unless upon a statement of facts to which the advocates of both plans agree. The *Massachusetts State Prison*, at Charlestown, and the *Eastern State Penitentiary*, at Philadelphia, may be conducted well or ill, without involving, in the remotest degree, the question of separation and association. Causes entirely foreign to these principles, may account for all that is approved in the one, or deprecated in the other. We say such independent causes *may*, not that they *do*, account for such results. The Charlestown prison does not claim to be conducted on the Auburn plan,\* nor do the friends of the separate system admit

\* Mr. Gray seems rather to eschew an adoption of the Charlestown prison into the Auburn family of penitentiaries, but the Twenty-second Report of the Boston

that their principle has yet been carried out,—at least, on this side of the Atlantic.

We may add, in this connection, that the position of the contending parties to the prison controversy in the United States, has been shifted from time to time, and this has probably contributed, not a little, to protract the discussion and embarrass the essential inquiry. The truth is, that when the first efforts were made to ameliorate the condition of prisons, so forlorn and wretched, and almost hopeless was their state, that a very slight change for the better was quite obvious, and was hailed with enthusiasm.

As the prolific source of evil was *association*, the natural proximate remedy was *separation*; and the change from indiscriminate association of all ages and sexes, night and day, to individual separation for the night only, was justly regarded as a vast stride in the career of improvement. While the revolting results of the herding together of all classes—convicts, witnesses, and accused parties—veterans and novices—tried and untried—were staring philanthropists in the face, it should not surprise us if some of them were for pushing the remedial process to an extreme, and going over from promiscuous association to literal, unmitigated, unemployed seclusion.

That this idea of strict solitude, without employment, was entertained by sound and judicious theorists, seems quite incredible to us, with our present views; and yet there may have been limitations and qualifications in their scheme, which, if not unknown, are but imperfectly estimated in our day. That absolute, involuntary solitude may be endured for a limited period, without putting in jeopardy the health of mind or body, all will admit.\* In Massachusetts, certainly, if not in other States, a brief period of from one to ten days is almost uniformly required to be spent by the convict in strict solitude,

Prison Discipline Society, (1847,) denominates it "one of the most approved of the Auburn class," (p. 88.) Mr. Gray prefers the idea of "a great manual labor school," to which he likens it, in sundry particulars, (p. 47.)

\* See Art. 1. No. 1., Vol. IV. Prison Journal, Philadelphia, July, 1848.

without light, and on a bread-and-water diet. In some prisons in the United States the period is extended to twenty or even thirty days. It would not seem very preposterous, therefore, even in the ancient and enlightened Commonwealth of Massachusetts, should it be proposed to prolong this preliminary discipline to a week or a month, or farther, if it might be safely done. If public justice were as fully vindicated, and the other ends of punishment were equally answered by substituting a brief period of literal solitude, without labour, and with a bread-and-water diet, for a long term of years of ordinary imprisonment, who will say that important advantages might not be secured, and that, too, without any increased risk to life, health, or reason?

It might be argued, (not without plausibility, possibly not without force,) that the shorter the time occupied in punishing an offender, the better for him, and for the community, provided the punishment is equally thorough and efficacious. A penal system ought to aim at economizing pain, by diffusing the largest amount of salutary terror, and thereby deterring as much as possible from crimes, at the smallest expense of punishment actually inflicted. If a penal process, which might be completed in a month, accomplishes as fully the ends of punishment, as that which extends through a series of years, and without any greater hazard to the bodily or intellectual sanity of the sufferer, it is a most desirable saving of the convict's time, a sensible relief to the public treasury in a variety of ways, and a vast reduction of the number of persons in confinement at any one period.

Besides, the advocates of a severer, but briefer process, might further urge, that to seize a suspected man in the midst of his occupations, and hurry him away from his family and his neighbors, and shut him up some months, it may be, to await a trial, and, if convicted, transport him thence to the penitentiary, even under a twelve months' sentence, is no light infliction; while to extend it to five, seven, or ten years, is to cut out a large section of his active life, to break up all his domestic associations and plans, to reduce his family to penury as well

as infamy, and oftentimes to put in jeopardy, some of the chief objects of the punishment. For we hold it to be quite indisputable, that the crisis in the moral effects of imprisonment for crime, is often reached at a very early period in the progress of it, and that the influence of confinement under any system, beyond that period, is often far worse than useless. So that it is by no means clear, that one of the most important future revolutions in the science of prison discipline, will not occur in some such form; and instead of a man's being incarcerated seven or ten years for forging a letter, or passing a counterfeit note, or receiving stolen goods, he will be summarily convicted, and punished with a severity proportioned to the heinousness of his crime; but allowing him a much earlier opportunity to return to his place in society, and prove his claim to new confidence, before his name is blotted out, and all his social relations and sympathies extinguished. But we have no design to discuss this point. It came in collaterally, and in connection with a remark upon the frequent changes in the position of parties who have engaged in discussions of this kind, and upon the embarrassment which the leading inquiry has suffered in consequence of this.

The severe theory of unemployed, unmitigated solitude, to which we have just adverted, was introduced while the question was pending what mode of discipline should be adopted in the new Penitentiary in Philadelphia; and hence, unfortunately, some have confounded the idea of solitude with that of separation, while others disingenuously nourish and give currency to this false impression, by using terms or citing authorities that have no application to the separate system, however they may apply to such a state of solitude.

Mr. Gray uses the terms, "*solitude*," "*solitary labor*," "*solitary cell*," &c., throughout his pamphlet; and the experience of Lafayette in the dungeons of Olmutz is often cited by the anti-separatists, as of great weight on their side! It was among the gravest charges brought against one of the Annual Reports of the (Boston) Prison Discipline Society, during the recent debate, that under the imposing head of "OPINIONS OF THE



PENNSYLVANIA SYSTEM," the opinions of Lafayette and Roscoe were cited, when it was well known that their opinions related solely to absolute, unemployed solitude, and were uttered (if uttered at all) some years before the "*Pennsylvania system*" was introduced.

No one who has not carefully watched the discussion, can conceive how much this single false conception has contributed to blind the eyes, mislead the judgment and pervert the reasoning of honest anti-separatists. And we are not a little surprised to find, that an intelligent writer like Mr. Gray, has fallen into the error of supposing, that the confinement of each convict to a solitary cell by day and by night, without permission to labor, was ever a part of the "*Pennsylvania system*." Such a severity of discipline was only contemplated, in connection with that system, as a preliminary to hard-labor for a term of years, or for some particular class of convicts, or as an extreme resort for a violation of prison rules, or for cases of hopeless incorrigibility.

That changes have occurred in the opinions of the advocates of the separate system, touching many of its details and subordinate results, is not denied. Such changes are incident, perhaps, to the nature of the subject. Observation and experience have led to unessential modifications both of principle and practice. The harsher features of both systems have been meliorated, and ground that was once maintained *pugnis et calcibus*, has long since been quietly abandoned. The only important questions that remain open, as it seems to us, are *questions of fact*; and these can be investigated, we should think, and discussed, without either acrimony or dogmatism.

## SECTION IV.

OF THE FORCE OF THE TERMS "SEPARATE" AND "ASSOCIATE," AS THEY ARE USED IN RELATION TO THIS SUBJECT, AND THE SUPPOSED ADVANTAGES AND RESULTS OF THE SYSTEMS WHICH THEY RESPECTIVELY DESIGNATE.

Mr. Gray, in his elaborate treatise on this subject, assumes that one of the most important of the undecided questions involved in convict discipline is, "whether the daily labor of prisoners should be carried on in workshops, containing several in company, under constant supervision, or by each alone in entire solitude."\* We have no knowledge (as we have before said) of any party or person that holds to the latter course, nor of any penal institution in the wide world in which it is adopted. It is unfortunate that the writer of so systematic a treatise on this important subject, should have been betrayed into so grave an error at the outset of his inquiries; and we can account for it only on the ground, that he has never visited a prison in which the separate discipline was in use. We presume, no person of ordinary intelligence, who had once visited the Eastern State Penitentiary, could have left it with the impression that each "convict works alone in entire solitude."

There has never been any difference of opinion, we believe, as to the essential principle of non-intercourse. It has been maintained, however, by some, that this principle may be preserved in its integrity, while the convicts work together, or in sight of each other, but under strict rules and constant supervision; while others insist that the benefits which this non-intercourse is admitted to confer, cannot be perfectly realized, unless by the absolute separation of each individual convict from his fellows; so that not only shall all communication in every form and degree be precluded, but also all knowledge of each other's person.

The anti-separatists have turned to good account some casual expressions of the late Mrs. Fry, which seemed to favor their views. These were quoted with some assurance and satisfaction in the late public debate in Boston, but we think without warrant. Her opinion of separation is contained in one of the mottos upon our title-page, and the subjoined note discloses her views of congregation.\* Whatever use may be

\* "Who that has reflected much, or marked the workings of the mind of man, has not found, that without word or action, a spirit may pervade any collection of persons, either of resistance, opposition and defiance, or of comparative kindness and subordination. No delusion did she consider greater, than that man can be treated as a machine, and remodelled, though having his conduct bent to obedience by strong coercion and dread of punishment. To benefit a sentient being, his sympathies must be as much as possible enlisted on the right side—the spirit of opposition never needlessly excited, nor his displeasure aroused against the circumstances he is under, and the authorities over him. Perhaps, no scheme could be contrived by the ingenuity of man, more likely to petrify the little remaining softness of the heart, or aggravate his already rebellious passions, than to consign an individual to the companionship of others similarly circumstanced, submitting to in act, but resisting in spirit the influences they are under. He and they may be so placed as habitually not even to see one another. But who will believe that there are not moments and opportunities, when the evil glance can pass from man to man? When the concentrated malice that burns within, will show itself in the countenance? When the mighty power of the human eye can convey meaning, or circulate a watch-word of mental resistance, without a sound escaping the lips? Men are not likely to abhor evil, from being driven to abhor the method by which it is purposed to bring them to good. To induce an inclination to do better, something of a taste for better things, a glimmering of light shed on the darkness of former depravity, were, in Mrs. Fry's estimation, the great objects to be obtained. As a loving parent mixes tenderness with unflinching and even stern severity, so would she have had the State, the powers that be, deal with the offender; as

A father whose authority is shown  
When most severe, and mustering all its force,  
Is but the graver countenance of love.

With these views, she could not fail as occasion presented itself, to urge her opinions upon others, and deprecate the attempts at enforcing absolute silence among prisoners. The endeavor absolutely to close all avenues of communication, where personal contact remained, was, in her estimation, in its practical workings, as delusive as the system itself was harsh and untenable." (Memoir of Mrs. Fry, vol. ii. p. 388.)

made of her opinions to excite distrust of separation, we are quite sure they will not be cited as authority for the associate or congregate discipline !

The principle of separation, as the advocates of the system have always contended, must be applied in prisons of all grades, before its full value can be appreciated. For it is obvious, that if the prisons of mere detention—the county gaols,—are left to suffer all the evils of promiscuous intercourse, the separation at the Penitentiary comes too late to accomplish the results of which it is capable. When the county prisons, which supply the inmates of the Penitentiary, are all constructed and conducted upon the established and approved principles of the separate system, and the Penitentiary itself is administered in strict accordance with them, we shall be prepared to estimate their practicability and value,—not before. And the theory of separation is answered by nothing less.

But the seclusion of the convict from his fellows is only half the process; for while with one hand the separate system closes the door against convict-association, with the other it opens it to the free and welcome introduction of kind, sympathizing and judicious friends, that love the luxury of raising the fallen, cheering the despondent, winning the wayward, and encouraging all to "look up." The society of the good, is as much an integral part of the separate system, as the exclusion of the bad. It insulates the prisoner from the convict population which surrounds him, but indulges him in all other association, which is consistent with the design of any penal institution of the same grade. Indeed, it may be affirmed, without fear of an intelligent contradiction, that in any fair development of the two systems, more association is allowed by the separate than by the silent discipline. So far as actual oral communication of a convict with his fellow men is concerned, there is far more of it allowed and enjoyed in a separate, than in a congregate prison. Who would think this could be possible, if they should receive the impression which Mr. Gray's book is calculated and doubtless intended to produce ?

Six full pages of Mr. Gray's book, are occupied in an attempt to prove that the "separate system, as now administered in Philadelphia, allows less than fifteen minutes a day of human intercourse to each convict."\* Assuming this statement to be arithmetically exact, are not the convicts who enjoy that brief pleasure, to that extent better off than the convicts in congregate prisons, where, by the theory at least, they are positively denied all intercourse, alike with the bad and the good, except what is absolutely necessary with the officer respecting their work? "How much social intercourse it would be requisite to provide, in order, not merely, to prevent these terrible results," (which his fancy had just before fully sketched,) "but to maintain in full health and vigor the nervous system, and all the faculties of body and of mind," is the question which Mr. Gray suggests, and he presumes "no one would think of less than *two hours* a day!" And as such duties are usually assigned to the clerical order, he forthwith counts his chaplains, one for every four convicts; and in a trice, we have the corridors darkened by a crowd of ninety-one of these reverend functionaries in the Eastern State Penitentiary, and seventy-four in Charlestown; and then, with all the confidence of a man who thinks he is in the right, he puts it to the common sense of his readers to say, whether the people of Pennsylvania would pay the salaries of ninety-one chaplains at Cherry Hill, or whether the people of Massachusetts would employ seventy-four, or even thirty-seven of them at the Charlestown prison! He knows, perhaps, what a struggle we had to get even one into our institution, and that, too, under the very vague title of "moral instructor;" and of course, he knows, full well, that if we must have ninety-one of them, the case is hopeless.

Shrewdly apprehending that the Philadelphians might, perhaps, benevolently propose to furnish lay visitors, he thrusts into view the appalling impracticability of finding ninety-one of the laity in all Pennsylvania, or seventy-four in all Massa-

chusetts, who would thus devote, "not a part of the day, but the whole day, and every day, year after year, to visiting the inmates of the prison," &c., and thus desperately he pushes us to the wall. The separated convict goes mad, or dies, because his daily interviews with an honest friend, do not exceed **FIFTEEN MINUTES**; whereas to save his life and reason, it ought to be **TWO HOURS**!

And does the author of the pamphlet suppose, that no one will have wit enough to ask what the poor convicts in Wethersfield and Auburn and Charlestown do? If Mr. Gray's account is to be received, they are healthy and happy without any "human intercourse" at all, except with a keeper, and with him only on one subject, and then almost on their knees! Can it be that the mere sight of other rogues, on the same premises, supplies the absence of a friendly talk, even of fifteen minutes, (to say nothing of two hours,) with an honest friend and visitor? This is the necessary construction of his language, and all his reasoning shows this or nothing.

Those who oppose or distrust the theory of separation, have usually urged these objections:

1. The greater expense it involves for the buildings and employment of convicts.

2. The supposed waste of health and life; and,

3. The danger of making the convicts insane. And at the same time they maintain that the advantages of it, if not imaginary, are greatly over-rated. For example, they say that the knowledge which convicts acquire of each other's features and persons by silent association during their joint duress, is not abused in the manner nor to the extent supposed, and, therefore, the cutting off of an opportunity to form such an acquaintance is not worth the cost and risk which it involves. This is a fair and open question, to which inquiry and observation must furnish an answer, and about which we shall have something more to say in the sequel.

As to the first of the three grounds of objection above named, he must be a very narrow-minded economist, or must have very limited views of crime and its relations,

to stickle upon a point of mere expense.\* If a man, whose heart is fully set in him to trample upon private rights and public laws in pursuit of his prey, can be reformed and converted from an enemy and pest of society into an honest, industrious, and faithful citizen, money cannot measure the public gain, and money should not be counted in determining what process will be most likely to accomplish so desirable a metamorphosis. One of the first requisites to bringing it about is, to adapt the discipline which he is to suffer, as far as may be, to each individual's character, disposition and circumstances. Surely, in a body of three or four hundred men, of every age, class, and capacity, there is room for some discrimination in the mode of treating them as subjects of penal reform. Not unfrequently we find a man of education and high social standing, and, up to the moment of his late offence, in good repute among his fellow-citizens,—by some sudden impulse or strong temptation, prompted to a deed of violence or fraud. His self-respect and desire to retrieve the reputation he has forfeited, are by no means extinct. And to preserve them from extinction is one of the first objects which a system of prison discipline should endeavour to secure. To attain it will justify unwearied pains and patience. If by this or any other means the chance of permanent reformation is increased, society is a gainer; for, as a general thing, a convict who is not improved by his duress is made worse; and there is not a more reckless enemy of society, than one who has felt the vengeance of the law with no effect but to mortify and irritate him. Shall we make light of whatever remains in a fallen man like deference to public opinion and the hope of being restored to his lost position, and thrust him into the daily presence and society of the most degraded and infamous and hardened desperados, just because his confinement in a separate

\* If we mistake not, time will show that not a little misapprehension prevails respecting the comparative expense of the two systems, irrespective of reformatory and deterring influences; we mean that the actual income and expenditure, in dollars and cents, will be found much less favourable to associate prisons than is generally supposed.

apartment will cost twenty or fifty dollars more annually? He is disposed to take all the risks to health and life, which are alleged to attend the most rigid seclusion, if he may but be exempted from the gaze of curious visitors, and from daily association with those who "glory in their shame." The association of a convict, by mere personal presence, with those who are known to be in the same or a similar predicament of infamy and guilt with himself, is, of course, corrupting. Efforts to throw off unwelcome inclinations to self-reproach, or to avoid reflection, are greatly assisted by the company of the more hardened and shameless. Many a purpose of amendment, formed in the solitude and silence of the night, is forgotten in the bustle of the workshop, and in the presence of those who exult in having steeled themselves against all meliorating influences. The principle to which we refer is part of man's nature. It is seen in the first years of life. The school-boy that will confess his fault with tears of contrition to his master or parent ALONE, will put on an air of defiance and hardihood in presence of his associates, which is often so clearly assumed as to defeat its own end. And we all know how prejudicial to any real reform or improvement such a frame of mind is, however artificial it may be. The very wish to conceal our emotions, or to act a double part, is radically inimical to reformation. We do not put the case for the sake of the culprit merely. Suppose him to be out of the range of human sympathy, and that the question were resolved into one of simple public economy, can there be any doubt that we had better husband even a bare *modicum* of ingenuousness and self-respect as a vital element of reform? We are to keep in mind that the law can but seldom and slightly discriminate in the distribution of its penalties between grades of the same class of offenders. Inequalities in the severity of its sentences are irremediable in any other way than in some adjustment which the mode of discipline may supply; and there are few more formidable obstructions to the reformation of a convict than the abiding, harrowing conviction, that he suffers unjustly. We know not how this unavoidable evil can be met, in any way, so effectually.



ally as by putting the party into immediate seclusion, and thus making his case one of special, individual, studious interest.

For a single example: a pedler of fancy soaps and perfumes called at a city tavern for an honest purpose, and while there, was persuaded by an artful rogue to take a roll of spurious bank-notes for circulation. The first note he attempted to pass was of the denomination of five dollars. He did not succeed, but was arrested in the attempt. It was his first offence. He had a wife and children in the interior of the State entirely dependent on him for sustenance; but his absences were often long, nor did they mistrust that any evil had befallen him until their remittances failed. Without money, or friends, or resources of any kind, he was brought to trial in company with the two men who had misled him, and who were implicated in a like offence—and were in fact the manufacturers of the spurious notes. One of these was restored to liberty on condition that he would give up the dies and other implements of his nefarious business. The other, without family, was sentenced to two years imprisonment only, on account of his youth; while their dupe—the pedler of soaps and scents—with so many claims to mercy, was doomed to five years incarceration—seemingly because he was fifty years old, and the father of a dependent family, and had no instruments of mischief to surrender! We do not cite such a case as a ground of complaint against the law. Such inequalities in its bearings on society are inseparable from human institutions in our present imperfect state. But if we can alleviate the evils to which such inequalities give birth, or avert them entirely, it is “a consummation devoutly to be wished;” and it is for this very exigency that the system of *individual separation* admirably provides.

Upon a convict whose vicious propensities are strong, and whose associations are, from habit and choice, with the reckless and abandoned, it bears severely. The change to such a man would be extremely irksome, if he were merely constrained to withdraw from a crowd of thieves and vagabonds and mingle with an equally numerous crowd of honest men. But so suddenly to forego all exciting plots and adventures; to be so com-

pletely separated from the sight and hearing of his accomplices in deeds of fraud and violence, and to keep company day after day *with himself*, is an almost intolerable burthen. On the other hand, however, we find not seldom, convicts who have been betrayed into a felonious act against their better judgment and in violation of conscience, and who, though branded with infamy, have not lost all self-respect. The desire to repossess themselves of a forfeited good name is not extinct, nor are they so entangled by their criminal fellowships as to make the attempt to extricate themselves hopeless. The process which is employed to draw them out of "the horrible pit and the miry clay," however painful, is not unwelcome; and when the first surprise and the mingled emotions of disappointment and mortification have subsided, and they find themselves really *by themselves*, or with only the occasional society of the wise and good, the way is clearly open for better influences to come in and occupy the mind.\* If there be but a latent spark of virtuous feeling, there is here, at least a momentary opportunity to kindle it. The convict, on his first reception in a separate prison, sometimes awakes as from a dream, and scarcely believes his senses that he is really *alone*. Paradoxical as it may appear, there seems to him something like liberty in his very imprisonment; and when he submits himself with docility and penitence to the wholesome, though painful discipline, its severity is, by that same temper, relaxed and its salutary influences strengthened. And thus it is, that while the corrupt and desperate fret themselves through impatience of restraint and under the intolerable seclusion from the company and even the sight of those who are as corrupt and desperate as themselves, the better disposed are ready to adapt themselves to their circumstances, and thus, by making the best of the discipline, actually make the discipline best for them.

\* In Belgium, as at Geneva, the first thing generally asked by the newly arrived prisoner, *who has still some feelings of honesty left*, is to beg as a favor, that he may be separated from criminal companions. It is the only means, say they, of correcting us. . [M. Ducpetiaux, Inspector of Belgian Prisons, in a speech at Frankfurt Congress, quoted by Field, Vol. i. p. 137.]

We are now speaking of the remuneration which the public receive for whatever extraordinary expense is incurred in constructing a separate cell for each convict. It consists in the better opportunity which is afforded for correcting and reforming a bad man, and in the adaptation of the disciplinary process to the various conditions and circumstances of convicts. By individual separation the *term* of punishment is proportioned to the *nature of the crime*, while the *measure* of suffering differs according to the moral *character of individuals*. The seclusion and consequent privation of all means of sensual indulgence are, for a time, painful to all prisoners. None, therefore, are without punishment. But whilst the less vicious soon find relief in employment, instruction and opportunities for improvement, the more dissolute and depraved not only feel their punishment to be far more severe at first, but give evident proof that its severity continues so long and very much in proportion as their evil inclinations are cherished.\*

Dismissing, with these remarks, the first ground of objection as of the least importance, the gist of the controversy lies in a very narrow compass. That convicts should not associate with each other is admitted on all hands. Whether it is worth while to carry the principle so far as to build a cell for each convict, and provide him with work there, so that he may be literally personally separated from all the other convicts; or whether it will answer the important purposes of non-intercourse equally well to separate them in person by night, while they labor by day in the same shop, and perhaps at the same bench or anvil, under a strict surveillance and inspection, which may prevent oral or other improper communication, is the moot point. In other words, all agree in the propriety, wisdom and safety of individual separation for a term of days or it may be weeks, as a part of prison discipline: whether it is proper, or wise, or safe, to extend it through months and years, and even to the end of a sentence, is still controverted.

Those who are disposed to spend much time and strength in

\* Field on Prison Discipline, Vol. II. p. 110.

particular class of diseases, but because it produces more of all kinds of disease. Before we enter upon the question of fact which is thus raised, we suggest for the consideration of such objectors, some of the difficulties which their position involves.

If the constant seclusion of convicts from each other, such as the separate system contemplates, is peculiarly productive of disease generally, it would be likely to produce it always in all prisons of this class, and with some degree of uniformity as to its character and extent.

Like causes produce like effects. Should it appear on examination, therefore, that a separate prison in Europe is remarkably free from disease, not only when compared with other separate prisons, but with all sorts of prisons; and if it should also appear that a separate prison in the United States, is unusually infected with disease, we should look for the cause of such a difference, not to the permanent principle of separation inherent in both, but to some local, casual or temporary circumstances perhaps never occurring before, nor likely to occur again, or to some defect in the construction or economy of the building, or in the administration of the government of the institution. A pertinent example is at hand in the history of the Pentonville prison. From the opening of that prison to the termination of 1844, the annual mortality per 1,000 from phthisis alone had amounted to 11.47. "The medical attendant suspected that the dusty trades carried on in the cells might have added to the chances of death by this disease. In 1845, measures were taken to guard against the supposed cause; in 1846, only four cases per 1,000 of consumption occurred; and in 1847 (up to the 20th of October,) there was not a single death from this disease." We may readily suppose that an opponent of separation would have urged an argument against the system, in 1842-3, as the producer of consumption, and the returns of this prison would have been given in evidence, but we see how little the argument or evidence weighs.

Another striking illustration is furnished by the report of the general prison for Scotland, at Perth, which is used (very singularly) to show the disastrous effects of separation upon the

minds of convicts. The same medical report, which is relied on to excite distrust in the intellectual influence of the system, shows that in a prison population there, of three hundred and thirty, only eleven deaths occurred in two years! It is incumbent on those who urge the objection now under notice, to explain these anomalies or abandon their ground.

If, however, a great disparity in the amount of disease appeared uniformly in prisons administered on opposite principles, the probable or possible influence of these principles would be among the first subjects of investigation. But, whatever may be the discipline of a prison, no comparison can ever be justified between the health of those who are confined under it, and the health of the community at large. A state of imprisonment is, without doubt, in a certain degree, always prejudicial to health and longevity, as also to tranquillity of the mind; and this holds good with regard to all systems.\* The great change in the prisoner's way of life, who has been accustomed to the largest liberty, and is suddenly shut up in prison, must act sensibly on his temper and health. It is an inevitable consequence of punishment. It should therefore be no subject of surprise, if the sudden privation of all stimulants, the defeat of his nefarious schemes, and the depression incident to an entire exclusion from congenial society, should, as it respects the physical condition of the prisoner, prove unfavorable. Yet penalties must be imposed and the most efficacious must be preferred, although effects not intended to aggravate, should almost necessarily accompany them. To satisfy the legislator, it is sufficient to know that this or that mode of discipline does not, in this respect, produce worse consequences than another. If these premises are admitted, objection to separate confinement on the score of its effect on bodily health must be dismissed, if it can be shown that the injury in this respect is not greater than is found to result from other modes of discipline—and if we can show, that cases of disease originate no more frequently in

\* This doctrine seems to be questioned in the twenty-third annual report of the Boston Prison Discipline Society, p. 162.

a separate prison than in any other, we furnish a conclusive argument in its favor.

Here then we join issue upon a point of fact. *Is a greater amount of disease produced in a separate prison than in a congregate prison?* Our adversaries affirm it. We deny it. Before adducing our testimony, it will be proper briefly to recite the provisions of law, in conformity with which the separate system in Pennsylvania is established, and in conformity with which it must be administered, or it ceases to represent the idea of separate discipline. We shall confine our attention of course to those provisions which concern the oversight of the convicts, the sanitary precautions and the intercourse which is had with them, as these points only are involved in the present inquiry.

### *Mode of Treatment.*

I. Each convict is to be kept **SINGLY** and **SEPARATELY** at labor in the cells or work-yards of the prison.\*

### *Inspectors' Visits and Powers.*

II. The inspectors are to visit the penitentiary at least **TWICE EVERY WEEK**, and have full power to order its affairs as they please, save only that the *separate principle* shall be maintained inviolate.†

### *Inspectors' Duties.*

III. In their weekly visits to the several places of confinement, the inspectors are peremptorily required, (1,) to **SPEAK TO EACH PERSON CONFINED THEREIN** apart from any of the resident officers of the prison; (2,) to listen to and ascertain the truth of any complaint of oppression or ill-treatment, and redress it. In these visits they are moreover required to have with them the warden's calender of **ALL** the prisoners, and see by *actual inspection*, whether all the prisoners named in said calender are found in the situation it represents them to be in.‡

\* Act of Assembly April 23, 1829, § III.

† Ibid. § VIII. Art. 1.

‡ Ibid. § VIII. Art. 1.

*The Warden.*

IV. The warden must reside in the Penitentiary, and he is required to VISIT EVERY CELL and apartment and SEE EVERY PRISONER at least ONCE EVERY DAY. He enters in his journal the transactions of each day; records the visits of the inspectors and physician; and can inflict no punishment on a convict but with the approbation of an inspector.\*

*The Overseers.*

V. The warden appoints and dismisses at his pleasure the overseers or under-keepers, one of whom is assigned, on an average, to less than twenty-five convicts. These overseers are required to inspect the condition of EACH PRISONER at least THREE TIMES IN EVERY DAY—to see that his food is regularly supplied, and to oversee his work. They are also required to give immediate notice to the physician of any illness that calls for his aid.†

*The Physician.*

VI. The physician is required to visit EVERY PRISONER TWICE in every week, and as much oftener as the state of their health may require, and to report once a month to the inspectors. He has the exclusive care of the sanitary interests of the prison, both bodily and mental, and his directions are final, provided they are not contrary to law, nor inconsistent with the safe custody of the prisoners. And whether executed or not, his directions are to be entered on his own journal, and also on the warden's, thus fixing the responsibility definitely on an individual officer. When he has reason to believe that the discipline, treatment, or diet, is affecting injuriously the body or mind of a convict, he is to inform the warden, who shall enter the information on his journal, which entry shall be the warden's warrant for any change in these respects, until the next visit of the inspectors, who shall take order in the case.‡

\* Act of Assembly, April 23, 1829, § VIII. Art. 2.

† Ibid. Art. 3.

‡ Ibid. Art. 4.

*Visitors.*

VII. The persons who have a right by their office to visit the prisoners are, the governor; the officers and members of both branches of the legislature; the judges of nearly all the courts in the State and the public prosecuting officers; the mayors and recorders of the three principal cities of the State; the sheriffs and commissioners of all the counties, and the members of the acting committee of the Philadelphia Prison Society. No person, not included in this list, can visit the prison but upon special, written permission given in accordance with rules prescribed by the inspectors.\*

*Discharged Convicts.*

VIII. Discharged convicts, whose general conduct in prison has been good, are entitled to a certificate to that effect if they wish for it; and they also receive four dollars† in money, paid by the State, besides whatever may be due to them for overwork; so that they shall be relieved from instant want, and the temptations connected with it.

*Recapitulation.*

In reviewing these provisions, we find the following interviews are secured to the convicts:

1. With the inspectors *once a week at least*, and that for a sufficient time to give them opportunity of conference touching any matter of interest to them.

2. With the physician *twice a week at least* regularly, and oftener if need be.

3. With the warden *at least once every day*.

4. With the overseers at least *three times* every day.

So that, if the law is executed, it must be that every convict has an opportunity to see and speak with some officer of the prison by himself alone, at least **FOUR TIMES DAILY**, and with school-master and moral instructor at brief and uncertain intervals.

\* Act of Assembly, April 23, 1829, § VIII. Art. 7.

† Now increased to a sum not exceeding \$15, at the discretion of the Inspectors.



On two days of each week he *may* have six visits during the same day; for once every week he will see one or more inspectors; twice every week he will see the physician; once every day he sees the warden; and three times every day he sees the overseer of the ward; and we have only to suppose their several visits to happen on the same day, and the contingency we have mentioned will occur.

These interviews have been required from the opening of the prison, and are still positively enjoined by law. They are exclusive of the intercourse which the convicts have, at short intervals, with the moral instructor and school-master, whose vocations have been established at a more recent period, and exclusive, too, of the array of official visitors, as well as of strangers and casual visitors, admitted by an inspector's ticket.

Let any candid inquirer review this thoughtful and provident legislation, to secure to the convict in a separate prison, uninterrupted care and oversight and all needful opportunities of intercourse with those who are supposed to have his welfare at heart, and excluding only such as it is for his highest interest to shun, and then let him read the following passage from a speech reported in the public prints to have been made by the *Rev. Mr. Allen*, before a dense and intelligent assemblage of the citizens of Boston, June 9, 1847, during the popular debate upon this subject:

"The Pennsylvania system is one which destroys men, shutting them up in their **COFFINS** twenty-three hours in the day, and allowing them only to recreate themselves one hour in the day by walking in their **TOMBS**."

The requirements and provisions of law which we have just recited constitute the *basis* on which the separate system is and ever has been administered in Pennsylvania. The system, as such, is not responsible for neglects or violations of them if any exist, nor for the consequences resulting from such delinquencies. Starting at this point, then, we are prepared to introduce evidence as to the actual working of the principle embodied in these provisions.

## SECTION VI.

## EVIDENCE THAT SEPARATION IS NOT ACTUALLY UNFAVORABLE TO BODILY HEALTH.

LET us now call the witnesses to prove the actual effects of separation on the bodily health of convicts—and they shall be men who have skill in their profession—who sustain an unblemished reputation for candor and integrity, and who have had as good an opportunity to observe, minutely and thoroughly, the daily influence of the discipline both upon mind and body, as could be enjoyed under any circumstances. They are upon the stand; let us hear what they shall say:

DR. FRANKLIN BACHE.

Q. How long were you officially connected with the medical department of the Eastern State Penitentiary?

A. I was the first incumbent of the office, and held it from 1829 to 1836.

Q. What did you observe during that period of the effect of the discipline used in that prison upon the physical health of the convicts?

A. I can state what was the sanitary condition of the prison from year to year, and others can determine, as well as I, how far any peculiarity of the discipline is to be charged or credited with it.

## 1829-31.

From the opening of the prison in 1829, to January 1, 1831, fifty-eight convicts were received. Only two cases of serious indisposition occurred during that period—one of which was fatal—and that was a prisoner from the Arch-street prison, who was admitted into our institution in a diseased state. From a memorandum made at the time, I can state positively, that,

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**Q.**—Can you state any facts to show what proportion of the convicts, who are diseased when received, actually *gain* in respect to health, under the discipline of the prison?

**A.**—Of the one hundred and seventy-six prisoners discharged by expiration of sentence, &c. the past year, sixty-seven whites and thirty-one colored (ninety-eight in all) suffered no loss of health by their imprisonment, being quite as well when discharged as when received. Forty-one whites and twenty-five colored, (sixty-six in all,) were in better health when they left us, than when we took them, leaving only twelve (seven whites and five blacks) who were losers of health by their imprisonment. But to show the sanitary influence of the institution in a still more striking aspect, I can state, that of seventy-six of the discharges above named, forty-five white and thirty-one colored, all of whom had suffered an imprisonment for various periods, varying from two to twelve years, only four white and one colored, were discharged with deteriorated health, while eighteen whites and fifteen colored, were admitted in imperfect and discharged in good health;\* showing a very liberal dispensation of health from the prison to the public, in exchange for a very large contribution of sickness from the public to the prison!

**Q.**—Can you state with entire confidence, what proportion of the aggregate of disease in the prison may be justly ascribed to the presence of colored convicts, and which would be avoided were they withdrawn?

**A.**—My report clearly shows, that more than **FOUR-FIFTHS** of the mortality of the prison, are to be charged to the presence of colored convicts.†

### 1841-2.

In the fifth year of my service at the prison, we had an average of three hundred and forty-seven convicts, and we lost, by death, four whites (all of pulmonary disease) and thirteen colored. Three of the former brought chronic disease with them, and the fourth had the hip complaint in childhood, and was lame and emaciated when committed. Ten of the thirteen colored cases, were radically diseased when received by us,

\* Twelfth Report of the Eastern State Penitentiary, pp. 22-3.

† Ibid. p. 22.

and the remaining three contracted their fatal sickness by self-abuse. So that I am free to declare my conviction, that every case of mortal sickness in the institution the last year, is referable to admitted disease from without, or to the vicious personal habits of prisoners, and in no sense or degree, to the nature or effects of the discipline.\*

### 1842-3.

We had an average of three hundred and thirty-two convicts during the year 1842-3, viz., two hundred and twelve white and one hundred and twenty colored. Of these we lost by death only three of the former and six of the latter, which is an exceedingly favorable result. The per centage of mortality within our walls does not exceed that without; and if the whites only are included, it is much less.† Two of the whites brought with them the diseases of which they died; and the third was in imperfect health, and so registered when committed. Of the six colored, three died of diseases which were fixed upon them when they came into the prison—one was epileptic when committed, and the two remaining, were the victims of secret self-abuse. Not one of the nine cases of this year, can be ascribed in any form to our mode of discipline.‡ This was my sixth and last year's service at the prison, a resident physician having been appointed at the close of the first quarter of 1843.

#### Recapitulation of Dr. Darrach's testimony:

Year.	Average.	Deaths.	Remarks.	
1838.	387	17	7 diseased when rec'd.	
39.	401	26	15	" "
40.	418	11	10	" "
41.	406	22	16	" "
42.	347	17	13	" "
43.	332	9	5	" "
	<hr/> 2271	<hr/> 102	<hr/> 66	

Showing, in six years, an annual average of seventeen deaths

\* Thirteenth Report of the Eastern State Penitentiary, pp. 18, 19.

† Referring probably to the free population of like age, &c.

‡ Fourteenth Report of the Eastern State Penitentiary, pp. 17-19.



on an annual average of three hundred and eighty-two convicts; and of the whole number of one hundred and two deaths, in six years, sixty-six were registered as diseased when admitted, leaving only an annual average of six cases of fatal disease contracted in the institution, which is very nearly one and a half per cent.

**DR. EDWARD HARTSHORNE CALLED.**

**Q.** When did you commence your duties in the medical department of the Eastern State Penitentiary?

**A.** At the beginning of the second quarter of the year 1843.

**Q.** Had there been no resident physician previous to that time?

**A.** There had not, to my knowledge.

**Q.** What was the sanitary condition of the prison during the year 1843?

**1843-44.**

**A.** We had an average of three hundred and thirty-four convicts; though there were under my care, during some part of the year, four hundred and eighty-seven, viz. three hundred and twenty-five white, and one hundred and sixty-two colored, of whom two hundred and forty-two were not on the sick-list once in the course of the year. There was a clear gain of health on the whole. The ratio of colored prisoners sick, once or more during the year, was much less than the ratio of the same class who were in ill health when committed. The whites are oftener sick and oftener recover, while the colored are less frequently sick, but less likely to recover when they are sick; showing that it is nothing in the discipline employed in this prison that makes our colored bill of mortality heavy, but the difference of constitution and habits of life, affecting vitality, which renders the colored convict less capable of resisting disease when under restraint. We lost eleven by death during the year, viz. five white and six colored. Of the former three brought into prison with them the disease of which they died, and of the six colored only one was in good health when received, and he died after five years imprisonment. Nothing peculiar to the discipline, (if it existed,) would have been so

late in the exhibition of its effects. Of the six colored cases of mortality, four died of the disease which was upon them when they were committed—only two were in good health when admitted, one of whom died of small-pox, and the other of scrofula and cold.

*Q.* Apart from the change of habits to which convicts in all prisons are compelled to submit, have you observed any thing in the nature or effects of the separate system that is likely to occasion disease in a convict who is in good health when received?

*A.* I know of nothing.\* I served the institution during one-half of the year 1844, making the whole term of my connection with it fifteen months. My successor made out the tables for the year, taking my memoranda for the purpose. Until I left the institution every day's experience increased my confidence in the working of the system. Not only must we be surprised by the comparatively small number of genuine and severe cases of disease originating in a prison whose population is so largely and deeply depraved, physically as well as morally, and by the few instances of fatal termination, but we are impressed by the marked improvement in the health of many of the convicts. So that at the close of my brief term of service, I can fully confirm the opinion expressed by Dr. Bache, in his testimony already given—that considering the peculiar character of our prisoners, the comparative healthfulness of the confinement and mode of discipline of the Eastern State Penitentiary must be apparent to every candid inquirer.† That the principle of separation is not accountable for any of the diseases originating within the walls, is not only rational in theory but is proved by an analysis of indisputable facts now on our medical record.

*Q.* Can you express any decided opinion as to the comparative mortality of several prisons, some of which are conducted on the separate and others on the congregate system?

*A.* The per centage of mortality in five State prisons on the

\* Sixteenth Rep. E. S. Penitentiary, p. 26.

† Ibid. p. 41.

Auburn or congregate plan, derived from the ratio between the aggregate number of deaths and that of the prisoners within the year, is 2.41. That of three penitentiaries conducted on the separate or Pennsylvania plan, is 2.11; which shows a per centage of three-tenths in favor of the latter, notwithstanding the miserable character of the low black and wretched white vagrants that are crowded upon us from the dens and purlieus of the city.\*

DR. ROBERT A. GIVEN CALLED.

1844-45.

I succeeded Dr. Hartshorne, as resident physician of the Eastern State Penitentiary, July 1, 1844. During the year, I had under my oversight four hundred and ninety-seven different convicts, viz:—three hundred and forty-four white and one hundred and fifty-three colored. Of thirteen fatal cases of sickness, six were of whites and seven of colored prisoners. Of the former, three were diseased when committed; and of the other three, who were registered in good health when committed, two died of consumption, and the remaining one of chronic pleurisy. Only one of the seven colored was in good health when committed, and he died of consumption, and three brought with them the disease of which they died. It is to be specially remarked, that one of the seven colored convicts who died was consumptive when he came, and died of consumption at the the end of three months; another was scrofulous when committed, and died of scrofula at the end of two months; and a third was epileptic when he came, and died of epilepsy at the end of four weeks!†

1845-6.

In the second year of my term of duty, we had an average of three hundred and nineteen convicts, viz:—two hundred and twenty-four white and ninety-five colored; and of these we lost fifteen by death, only three of whom were whites. Of the fifteen, ten, (or two-thirds,) were fatally diseased at the time of their commitment. I am able to state my

\* Fifteenth Rep. E. S. P. pp. 28, 29.

† Sixteenth Rep. E. S. P., p. 41-49.

belief that the health of the prison has been equal during the past year to that of any other penitentiary in the country. The per centage of mortality, though larger than in any of the three last preceding years, is chiefly from chronic maladies, and compatible with a high state of general health. The sickness of the year may be literally said to have been confined to the fatal cases, and such as are now under treatment in the infirmary.\*

*Q.* How do you account for so great a disparity in the mortality of white and colored convicts, if you exclude the idea of the peculiar hardship of the discipline upon the latter?

*A.* I ascribe it entirely to the peculiar habits of that class of convicts;—such as their characteristic neglect of the necessary means of preserving health, their extreme sensuality and extraordinary tendency to thoracic and tubercular diseases.†

*Q.* Do you think the peculiar feature of the discipline (separation) operates more severely on the colored than on the white convicts?

*A.* If my experience and observation justify the expression of an opinion, I should say, without hesitation, that it does not.‡

#### 1846-7.

In the succeeding year we had an average of three hundred and twenty-six convicts, viz:—two hundred and thirty-five whites and ninety-one colored. Of these we lost thirteen by death, four of whom were white. Of the whole number, nine were in imperfect health when committed, and five died of the diseases which were then upon them.

*Q.* Do you know of any causes in the discipline or economy of the Eastern State Penitentiary, which could be supposed to operate in the production of more disease there, than is found in the same number of convicts, under any other mode of prison discipline or economy?

*A.* I have no doubt that the extraordinary number of colored convicts we annually receive, is one leading cause of the actual amount of disease, whether it be larger or smaller in

\* 17th Rep. E. S. P., p. 32.

† Ibid. p. 52.

‡ Ibid.

other prisons—as the tendency of that race to consumptive diseases, in all parts of the world, is well known—and there can be no doubt, I think, that the proximity of the Eastern State Penitentiary to the city of Philadelphia, has a very decided influence to increase the per centage. This will be quite apparent, when I state that of two thousand two hundred and seventy six prisoners committed to the Eastern State Penitentiary since it was opened, in the summer of 1829, nine hundred and forty-eight were from the county of Philadelphia, and one thousand two hundred and twenty-eight from all the other counties of the State; and yet of the whole number of deaths which occurred there within that period, (one hundred and eighty-nine,) one hundred and fourteen occurred among the nine hundred and forty-eight Philadelphia county convicts, and only seventy-five among the one thousand two hundred and twenty-eight from other counties—showing double the mortality for the former, and proving incontestibly, to my mind, that nothing peculiar to the discipline of the institution is responsible for any supposed excess of mortality. The peculiarity, whatever there is of it, lies in the sources whence the population of the prison comes, and in the state and condition of large masses of the convicts when admitted. An examination of the facts must satisfy the most prejudiced, that the balance of healthy influences preponderates in favor of the separate system.\*

### 1847-48.

In the next year we lost only eight convicts by death† from disease, out of an average of two hundred and ninety-four. The average time of their imprisonment was three and a half years. Six of the eight were colored, and three were in imperfect health when admitted. Of those registered in good health when received, three were old convicts and two were debauchees. The bills of the year show a lower degree of mortality than in any previous year, since 1842. I am confident, however, that without in the slightest degree encroaching upon either the letter or the spirit of the discipline we em-

\* 18th Rep. E. S P., pp. 50-51.

† There was one case of suicide.

ploy, it is within the power of hygiene permanently to reduce our mortality still lower.\*

Recapitulation of the testimony of Drs. Hartshorne and Given :

Year.	Average.	Deaths.	Diseased when received.
1844.	334	11	8
45.	360	13	9
46.	319	15	10
47.	326	13	9
48.	294	8	3
	<hr/> 1633	<hr/> 60	<hr/> 39

Showing an annual average of twelve deaths in an annual average of three hundred and twenty-seven convicts. Of the whole number of sixty dead, thirty-nine were diseased when received, leaving only an annual average of four cases of fatal disease contracted within the institution, or about one per cent.

We have now spread before the reader the sum and substance of the testimony furnished from year to year by the medical officers of the Eastern State Penitentiary, from its opening to the year 1848. There have been four of them—two visiting and two resident. They are intelligent, impartial, independent witnesses. Their opinions and observations are, in the main, coincident; and more full, clear and conclusive testimony can never be expected nor asked on such a subject. No witnesses can be supposed to occupy a better position for ascertaining and comparing facts, and detecting any latent source of evil. If, therefore, their testimony is received at all, it is conclusive to show that the separate system, as administered in the Eastern State Penitentiary, does not affect injuriously the health of convicts. Whatever tables, or ratios, or comparisons may be constructed, (and an exuberant fancy can make wonderful fabrics out of figures,) so far as they lead to conclusions at variance with this testimony, so far they are to be distrusted. The best testimony which the case admits we have produced, and until it is impeached or contradicted, it must control the decision of every candid mind.

\* 19th Rep. E. S. Penitentiary, p. 35.

As we shall have occasion to refer to these gentlemen again when the influence of the separate system upon the minds of convicts is investigated, we do not resign them to our opponents at present. In the mean time we must trouble our readers to call to mind a proposition we have before made, viz. that if the constant seclusion of convicts from each other, such as the separate system contemplates, is peculiarly productive of disease, it would be likely to produce it always, in all prisons of this class, and with some degree of uniformity as to its character and extent. We propose, therefore, to inquire for a moment, how far such a presumption is sustained by the health returns of this prison.

What does the sanitary history of the Eastern State Penitentiary, as the same has been now disclosed by the four witnesses, show us? For facility of reference we have thrown the facts into tabular form, and beg attention to the anomalies it brings to our view.

Year.	DEATHS.			AVERAGE.		
	Total.	W.	Col.	W.	Col.	Total.
1830,	1	1	0	22	9	31
1831,	5	3	2	48	19	67
1832,	4	1	3	69	22	91
1833,	1	1	0	89	34	123
1834,	5	1	4	124	59	183
1835,	7	2	5	157	109	266
1836,	12	2	10	212	148	360
1837,	17	7	10	233	154	387
1838,	26	7	19	240	161	401
1839,	11	2	9	245	173	418
1840,	22	9	13	236	170	406
1841,	17	4	13	215	132	347
1842,	9	3	6	212	130	342
1843,	11	5	6	212	122	334
1844,	13	6	7	240	120	360
1845,	15	3	12	224	95	319
1846,	13	4	9	235	91	326
1847,	8	2	6	215	79	294

On an average of four hundred and eighteen convicts, in 1839, we lost eleven by death. An average of twelve convicts less the next year, (1840,) gave us double the mortality; while, in 1838, with an average of four hundred and one convicts, (or four less than in 1840,) we suffered twenty-seven deaths.

Thus, 1838,	402 convicts,	27 deaths.
1839,	418 "	11 "
1840,	406 "	22 "

If we take the triad of years immediately succeeding, (viz. 1841, 2, and 3,) it is equally fatal to any theory that ascribes the mortality in the Eastern State Penitentiary, (be it large or small,) to any uniform inherent cause in the discipline, or in the subjects of it. For, in the adjoining years 1841 and 1842, we find a difference of only five in the aggregate of convicts—three white and two colored; and yet, in the former year, there were seventeen deaths, and in the latter only nine; and what is still more observable, the ratio of white deaths in these two years, is as four to three—that of colored deaths, is as thirteen to six. In 1842 and 1843, the average number of white convicts was precisely the same; the difference in the average of colored convicts, (and of course in the total average,) was eight less in 1843; we find, however, a considerable increase of deaths upon a diminished population, and while the colored deaths in the two years were exactly the same, the white deaths were nearly doubled.

A comparison of 1840 with 1845, shows, that with a difference of only twelve in the average of white convicts, we had three times the number of white deaths in the former, that we had in the latter. Again, in 1839, we lost nine from an average of one hundred and seventy-three colored convicts, while in 1845, we lost ten of the same class from an average of only ninety-five, or one more death on a fraction over half the population!

So also in 1846, we lost but four white convicts on an average of two hundred and thirty-five, while in 1840, we lost more than double that number on an average of two hundred and thirty-six. The years 1841 and 1847, gave us precisely the



same average of whites, with less than half the number of white deaths in the latter that occurred in the former year, while the colored deaths are reduced nearly in proportion to the reduction of their number; showing, that while the average of convicts is only one-seventh less in 1847, than in 1841—the average of deaths is reduced one half in the same comparison.

Surely we need not (though we easily could) multiply these illustrations, to show how fallacious are all theories that embrace the idea of any uniform cause inherent in the separate system, which can possibly affect the vital statistics of a prison which adopts it; or that the system developes or aggravates diseases which would be counteracted or cured under some other form of penal restraint.

If it should be said that our evidence, whatever may be its weight, shows only the effects of separation in a single prison, and may not be so favorable if derived from other prisons of the same class, we reply, that no two penal institutions in the country, would furnish a contrast more unfavorable to the separate principle, than the two Mr. Gray has selected. It is his choice—not ours. And if the separate principle can maintain itself at such a disadvantage, it may be trusted any where. The Eastern State Penitentiary is, strictly speaking, an experimental prison. It was the embodying for the first time, in a material structure and in a system of penal discipline, what had been before but an imperfect conception, or at best, an untried scheme of philanthropy. The State Penitentiary at Charlestown, on the contrary, was built in full view of the “world’s model.” The principle which was recognized in its construction and manner of discipline, had been fully tested (as it was alleged) at Auburn, and the result brought to view the *summum bonum* of penal suffering. If the congregate system is not seen in its most full and perfect results, there, we may despair of such a sight.

We are to consider further, the local position of the Eastern State Penitentiary. Within an hour’s ride of slave-territory, and in a city swarming with a degraded and forlorn population of blacks, it is compelled to receive a very undue proportion

of convicts of this complexion, and those of the most hopeless character, whether regard is had to their moral, intellectual or physical condition. The State Penitentiary at Charlestown, on the contrary, though in the vicinity of a city, has scarcely an appreciable proportion of colored convicts, and draws a much larger share of its population from the rural districts, than the Eastern State Penitentiary receives from the like source.

Taking into view, therefore, that the Eastern State Penitentiary is less favorably situated than any other prison of its class, to secure the known advantages and shun the alleged evils of convict seclusion, and that the State prison at Charlestown, (according to Mr. Gray's view of it,) combines the advantages of both systems, without the defects or hazards of either, we may safely infer, that if our evidence exonerates "the separate system as now administered in Philadelphia," from the reproach of any such tendencies as Mr. Gray alleges, it could not be justly cast on any prison upon that plan elsewhere.

We should feel it to be quite superfluous, if not impertinent, to summon the inspectors, the successive wardens, or the moral instructor of the Eastern State Penitentiary, to corroborate the evidence which the testimony already offered, supplies. Although from their position and relations to the prison, they must have a much more perfect knowledge of the moral and physical effects of the discipline, than a stranger, or a casual, or even an official visitor; yet they would very properly be set aside to introduce the medical attendants, from whom *alone* (all other things being equal) the best evidence could be obtained; and we are quite prepared to rest the issue on their testimony.

If, however, some stubborn prejudice should refuse to yield unless such confirmation is furnished, it can be drawn without stint from the voluminous reports of the inspectors and wardens, through a series of twenty years; from the reports of legislative committees, charged from time to time, with a thorough investigation of the tendencies and results of the system, in the very respects to which the present inquiry relates, as well as from the many able and elaborate documents touching

the working of the separate principle, as compared with the associate, which have been prepared for the guidance of sister States, and by commissioners from foreign governments, who have faithfully and minutely examined institutions of both classes, in Europe and America, and who have spared neither pains nor expense, in obtaining and digesting the evidence of friends and foes.\*

Neither the plan of the present discussion nor the position in which Mr. Gray's pamphlet has placed the subject, requires us to produce further testimony in exculpation of the separate system from the reproach of impairing health and destroying life. But for the purpose of setting in a still clearer light the aggravation of the wrong which is done to that system by its opponents, we go a step farther.

As we have before said,† if convict separation does really tend, more than convict association, to produce disease and death, it must be expected to do so with some degree of uniformity as to nature and measure, in all prisons administered on that principle. Let us then look for a moment at the results of the only other Penitentiaries of this kind in the United States, viz. the *Western Penitentiary*, at *Pittsburg*, and the *New Jersey State Prison*, at *Trenton*. We have before us the last two Annual Reports of both, and they show the following facts touching the health department.

\* To save time and space, we simply refer the reader to a few brief passages in these reports, as bearing more specifically on the points now in discussion—and which they will find as follows:

Year.	Report of Insp.	Do. of Warden.	Year.	Report of Insp.	Do. of Warden.
1831.	2d pp. 10, 12.	pp. 15, 17, 18.	1839-40.	11th p.	7. p. 13, 15.
1831-2.	3rd p.	4. p.	5. 1840-41.	12th p.	4, 6. p. 7, 8.
1832-3.	4th p.	6. p. 9, 10.	1841-42.	13th p.	7. p. 9.
1833-4.	5th p.	3. p.	7. 1842-43.	14th p.	5. p. 9.
1834-5.	6th p.	3. p.	6. 1843-44.	15th p.	11. p. 15.
1835-6.	7th p.	7. p.	10. 1844-45.	16th p. 14, 15.	p. 23.
1836-7.	8th p.	7. p.	10. 1845-46.	17th p. 14, 20.	p. 22.
1837-8.	9th p.	6, 7. p.	8. 1846-47.	18th p.	32. p. 35.
1838-9.	10th p.	6, 7. p.	8. 1847-48.	19th p.	4. p. 19.

† *Supra*, p. 45.

On the 1st of January, 1847, there were in the Western Penitentiary one hundred and twenty-six convicts; and, during the year, one hundred and eighty-two were under care, of whom three only died. One of these was lingering under tubercular consumption when received, and had previously suffering several severe attacks of hæmorrhage from the lungs—was much emaciated and very feeble, unable to walk without assistance, and died in four months after he was received. Another had a feeble, broken constitution when received, and was then subject to mental hallucinations; and the third was suffering at the time of his admission from an injury done to the spine by jumping from a high wall of a county prison-yard. This occasioned agonizing neuralgic pains, which gradually wasted his health and strength. In this enfeebled condition he was attacked with bronchitis, and thus terminated his life, which had been one of intense suffering during all his imprisonment, (p. 20.) So that, so far as the prison-treatment is concerned, the history of this year is *without a single instance of mortality*; and at the date of the report, with the exception of a very few chronic cases of convicts hopelessly diseased on reception, none were under treatment.

The report of January 1849, shows that one hundred and fifteen convicts were then in confinement, and one hundred and sixty-seven had been tenants of the prison during the year. Of these four died. In three of them there was an hereditary tendency to consumption, and all died of that disease. Of the three, two were in very feeble health and the right lung of one of them was greatly diseased, when they were admitted. The fourth was intemperate in his habits and died of apoplexy. The physician states, that "with a single exception, every prisoner discharged during the year, left the prison in good, or in an improved state of health. And further, that with an average of forty-eight or fifty convicts in the shoemaking department, only four failed, from indisposition, to perform their full task of work through the year." (p. 15.)

There were confined in the New Jersey Penitentiary at Trenton, during the year 1847-8, two hundred and fifty-seven

convicts, of whom only two died; one of apoplexy four weeks after his admission, and the other, "probably in a fit, having been found dead in his bed on opening his cell in the morning, and without any previous illness."

In 1848-9, there were two hundred and sixty-one convicts within the prison, among whom the physician reports but one death, and that by suicide. The warden's report mentions two deaths, of which one was by suicide, "believed to have been induced by circumstances that transpired previous to his admission." (p. 30.) From diseases contracted within the prison, (says the physician,) where there are under discipline two hundred and sixty persons, *the deaths do not average one a year.*" (p. 43.)

We hazard nothing when we say that such a state of health in a prison population, as these reports show to have existed in two out of the three penitentiaries on the separate plan in the United States, is very rarely found under any discipline in any part of the world.

The allusion to the case of suicide in the last New Jersey report, furnishes us with an opportunity to remark upon the singular fact, that among (say) a thousand convicts, confined in the course of a year in separate prisons in this country, there is very rarely a case of suicide; and so far as the reports show, not one has ever been traced to the effects of the discipline! Of twenty-three hundred convicts in the Eastern State Penitentiary, from its opening to January 1, 1848, only three committed suicide. Two of these were insane when received, and the third was of a reckless, desperate temper. When it is remembered, that all these prisoners have free and constant access to numerous weapons and various agencies of self-destruction, and that the opportunity is so favorable for the use of them, it is hardly possible to resist the conviction, that the mode of discipline to which they are subjected has no such tendencies to derange the mind, as its opponents allege.

## SECTION VII.

## DOES THE SEPARATE SYSTEM, AS SUCH, TEND MORE THAN THE CONGREGATE TO PRODUCE INSANITY?

This SECOND branch of our inquiry will embrace two questions:

1. Whether there is, in fact, more insanity in the Eastern State Penitentiary, or in any other penitentiary on the separate system, than in the Charlestown or any other congregate prison? And,

2. If there is, whether such excess is, in any sense or degree, attributable to peculiarity of discipline?

Lord Hale speaks of the "great difficulty of tracing the invisible line that divides perfect and partial insanity." Is not the invisible line much more difficult to trace which divides sanity from insanity? "I think," says Dr. Bell, "that no palpable line can be drawn between the point where sanity ceases and that where insanity begins.\* Yet I regard the distinction between those generally considered and treated as insane and those commonly esteemed of sound mind, as sufficiently obvious and practical."

Comparisons are easily instituted and conclusions quickly drawn from them. Imagination, too, can supply materials for new comparisons and for conclusions when facts fail. Thus Mr. Gray, after sketching with professional tact and in most shocking detail, a picture of Pennsylvania, with forty-five thousand madmen walking up and down in it, and Philadelphia with six or seven thousand, and Boston with three or four thousand of them, which he assures us would be the certain condition of these places if the same ratio of insanity prevailed among the population at large, that he persuades himself prevails in the Eastern State Penitentiary, says, that "with all this he has not exhibited the full measure of the evil, for the tables" (which he had cited

\* Dr. Bell in the trial of Abner Rogers, p. 159.

or referred to) "contain no cases but those of actual death or insanity." \* \* \* "No case of debility or disease, bodily or mental, is entered here until it reach that last extremity—death or insanity."\* And are cases of disease and debility ever entered in bills of mortality? we may ask; or has Mr. Gray read the Annual Reports of the Eastern State Penitentiary so seldom, or so superficially, as not to know that the minutest items of sickness are registered and reported with rigid accuracy from day to day, and from year to year, and with a degree of particularity which may be in vain looked for in any other prison-reports ever prepared and published on this side the Atlantic?

Mr. Gray continues: "Now, is it possible to believe that there are no such cases? that all those who have not attained this fatal consummation are full of health and vigor, &c.? It cannot be. Many more must be treading the downward path, who are yet more or less distant from its end."†

Let the reader call to mind the tenor of the testimony we have given on this subject, so far as bodily health is concerned, and then say whether the impression which this passage is fitted and evidently intended to make, can possibly be admitted for one moment without setting aside all that volume of evidence as unworthy of credit?

"It is the natural, nay, it is the necessary presumption," continues Mr. Gray, "that a mode of treatment which utterly destroys the health and reason of so many convicts cannot leave those of others entirely unimpaired." And then follows the appeal, as if all his assumptions and assertions were incontrovertible truths:—"Is it consistent with justice or humanity, to inflict a punishment which has this tendency?"‡

After presenting his deductions from a comparison of the opposite modes of discipline, the inquiry naturally arises, whence does this difference between the results of the two systems upon the health and sanity of convicts arise—(supposing a difference, such as he thinks he sees, really to exist.) "To ascribe the difference to any local causes, would be too ab-

\* P. 113.

† Ibid. 114.

‡ Ibid.

surd for refutation. To ascribe them to any cause whatever not local, has not the slightest effect upon the argument.”—We were just about to jump to what we thought would complete the syllogism—“and as all causes must be either local or not local, therefore, the difference can be ascribed to no cause at all!” But we were mistaken. The argument of the author, is neither ridiculous nor illogical—is only misused. It really is, that “if the cause of the alleged difference, (be it what it may) is alike under both systems, it must produce the same consequences in both, and cannot account for any difference in their results. If, on the contrary, it is most frequent under one system, then this greater frequency itself, and all its consequences, are justly to be ascribed to that system.”\*

By many readers of Mr. Gray's book, this position would seem quite impregnable, sustained as it appears to be, by his various calculations and comparisons. But it falls short of the point at issue, viz: what consequences does each system produce, and what difference is there in their results? In other words, *he should show that the cause is not as real and active under one system as under the other; and that the consequences which he and his coadjutors ascribe exclusively to one are not produced in both.* Let him show this, and his argument would be better warranted, and we would cheerfully admit it in all its due force. But the truth is, that the “cause” exists alike in both, and the “consequences” are disclosed alike in both, if not precisely to the same extent, (which would be an almost incredible coincidence,) good reasons can be given for the difference without impinging the separate principle, or even approaching it; and hence we maintain, that if the opportunity to mark the premonitory symptoms, the incipient forms, or the settled cases of insanity were alike, and the same rule of judging obtained in two institutions, conducted on the opposite principles, a fair report of the results would show nothing in this respect to justify a more favorable opinion of one than of the other. This is saying the least that separatists can be asked to say; and we proceed to show briefly, that we



can hold this position against all fair argument and honest testimony.

The number of deaths in a prison cannot be mistaken. The rule for determining who is dead and who is not, is fixed. But who is insane and who is not, is much less easily settled. In the community at large, persons are often found who manifest eccentricities of character and conduct which, from a variety of circumstances, are passed off as the effects of transient disease, the sallies of a perverse temper, or the overflowing of a morbid ill-humor with the world. Where there are anxious and watchful friends to note the early exhibitions of such states of mind, no time is lost in ascertaining the cause and extent of the mischief, and the earliest and most effective methods are adopted to counteract the tendency. The sufferer, scarcely conscious, perhaps, of any thing more than an occasional depression of spirits, is placed at once under the most skilful treatment which money can command, and is regarded and spoken of by the family and friends as an object of the deepest solicitude, or as in a state of health requiring "a change of scene, a voyage," &c. But if the individual affected is in the humbler walks of life, or far removed from observation, except by scattered neighbors, he passes on, from year to year, sinks perhaps from a clearly marked, though not violent stage of insanity, into imbecility and idiocy, is looked upon during the whole progress of the disease as a harmless creature, and manifests no disposition to be violent, except when annoyed by the thoughtless school-children or abused by heartless and weary relatives. Of the two, however, the most decidedly insane is at large and the other is in the hospital.

So if two institutions are to be made the basis of an inquiry as to the effect of essentially different systems of discipline adopted in them respectively, upon the minds of convicts, it is obviously of the first importance to ascertain whether the rule of judging is the same in both, and also, whether there is any material difference in the conditions and circumstances of the observers or the observed in the two prisons.

Had it been our fortune to have visited the State prison at

Charlestown, on the first of June 1843, we might have seen a man diligently at work in the shoe-shop, concerning whose sanity of mind and body, no convict, nor keeper, nor physician, nor other officer, entertained a suspicion; and yet from most melancholy developments made within only two weeks from that date, without any adequate exciting cause, it was but too evident that his mind was, at that very time, radically disordered. A visitor to the Eastern State Penitentiary, on the same day, might have seen a man under treatment for incipient insanity, who gave no indication of it that a common eye would detect—but a daily professional observer of his look and manner for a week or two, has probably awakened an apprehension respecting him. His opportunity for exercise is prolonged—he takes a spade or a hoe for an hour in the garden, and in a week or two, perhaps in a day or two, returns to his ordinary employment, in good health and spirits. In the reports of the two institutions, the latter might be charged with a case of insanity or dementia, and the former be set down as exempt from any thing of the kind; and that, too, without any intentional misrepresentation on either part. The opportunity to observe, and the rule of judging are as totally unlike as the results. The same may be true of a score of cases in either prison.

We hold, therefore, that before any satisfactory comparison can be made between a separate and a congregate prison, respecting the point now under consideration, (certainly before any important inferences are drawn, from such a comparison,) a rule should be established, certain, definite, and of uniform interpretation and application, by which all questions touching the sanity of a convict shall be determined. There should also be in both an equal astuteness, fidelity, and minuteness of inquiry into the condition of each individual prisoner, so as to secure an equally prompt and certain detection of symptoms; and it is furthermore essential that the manner of treating each case, when its character is developed, should be alike under both. Otherwise, an insane man may be continued at his daily task, in one institution, with but rare and momentary paroxysms of his disease, while in the other, he is withdrawn

from labor and placed under the most careful treatment, in the infirmary. This we know, and shall in due time prove to have been by no means an unusual contrast in the treatment of the same grade of insane patients, in different prisons.

We do not think that either of the above postulates can be denied us, nor do we see that any important deductions can be safely made from a comparison of the results of the two systems of discipline, if either of them were withdrawn. If it is said, (as it doubtless will be, by reflecting readers,) that no such definite rule or such uniform interpretation of it has been, or can be established, and that it is impossible for any two prisons to have medical attendants whose views and practice are so nearly similar as to answer our position, we have only to say in reply, that just so far as these impracticabilities exist, just so far the comparison of which we are speaking is inconclusive and useless. We will briefly advert to one or two of the most obvious causes of a wide and irreconcilable difference in the judgment of men, even when passed upon the same state of facts, with equal integrity and with like opportunities for forming correct opinions.

The history of the State penitentiary of New Jersey, at Trenton, furnishes a pertinent illustration. No one can read the annual reports of that institution without clearly perceiving that the medical officer entered upon his duties with decided prepossessions against the principle on which its discipline was administered. He may have been entirely unconscious of any undue influence from this cause, but it is in accordance with the observation and experience of all mankind, that such an officer, under such circumstances, would be likely to view every thing through a false or deceptive medium. It is no impeachment of his skill or fidelity, to say that he would think he had discovered symptoms of disorder (bodily and mental) which, for the very best of reasons, would fail to be noticed by others; and that all would be traced, more or less directly, to the distrusted principle of discipline; and in no other way can we satisfactorily account for the repeated instances of irreconcilable variance between the reports of the Warden and

Inspectors of that prison, and the report of the Physician. The former find the physical and mental condition of the prisoners such as to justify the highest encomiums on the system and its administration, while the latter sees only the ravages of disease and the stealthy inroads of delirium and idiocy.

It is worthy of observation, that the anti-separatists have relied much on the reports of the physician of the New Jersey prison, to show the unhappy effects of that mode of discipline upon the mind; but they are very shy of the opinions of the officers, inspectors and visiting committees, that go far to modify, if not to nullify the effect of those reports. Mr. Gray devotes seven pages of his book, to extracts from the medical reports of this prison.

In his fourth report, the physician had stated, that among one hundred and fifty-two prisoners, there were twelve deranged men, more than half of whom (of course seven at least) were fit for a lunatic asylum when they were received. This would leave five, at most,—perhaps four, or even three,—for whose derangement the prison must in some way account.

From the sixth report of the physician, Mr. Gray extracts the following passage, which he regards as “the conclusion of the whole matter.”

“Knowing the circumstances under which mind and body suffer most, care is taken to avoid all such evil; and now, while we admit the enervating tendency of solitary (?) confinement, we can report for the last year no death amongst an average of one hundred and forty-one prisoners. There have been but a few sick on the list at any time during the year, and no case of insanity has originated in the house during this time.”

“The cause of this great and extraordinary change”—(i. e.) from having five, four, or three out of one hundred and fifty-two convicts becoming deranged, to having none at all among one hundred and forty-one;—“we learn,” continues Mr. Gray, “from the physician himself;” from whose report he then cites the following:

“These very favorable results are to be attributed to the

constant employment furnished the convicts, and also to the treatment the prisoner receives on the first appearance of disease. If his mind begin to fail, and he shows symptoms of derangement, *another convict is put with him in his cell.* **THIS INVARIABLY RESTORES THE PATIENT.**" The italics and capitals are Mr. Gray's, and the quotations, italics, capitals and all, go, in their full bulk, into the *Christian Examiner*, (page 282,) and also into the *North American Review*, (page 170.)

The reader will note carefully what is stated by the physician, viz., that in the fourth year, in an average of one hundred and fifty-two prisoners, five at most, (perhaps only four, or three) were insane, who were not so when they came in; that two years after this, in an average of one hundred and forty-one convicts, there was not a single case of insanity; and he assigns as a reason for this "great and extraordinary change," that at the first symptoms of derangement, another convict is put in his cell with him. And pray, would it not accomplish the same object, if an honest man were put in his cell with him? It would not cost much. Only two or three, perhaps four at the outside, certainly not more than five, would need such attention in the course of a whole year, and then but for a few days, it would seem, and probably at considerable intervals. It would not be a great matter for the State of New Jersey, with a clear annual income of \$6000 or \$8000 from the labor of her convicts, if she should be saddled with an expense of one or two hundred dollars, for nursing patients a little while, when they are under her rod, and seem inclined to a state of derangement. If the principle of separation is worth being established at all, it is certainly worth being preserved at so small an outlay as this; but may we be so bold as to ask—What do the Auburn prisons do, when cases of this sort occur in one of them? The convicts are as silent as the grave by day, and are separated like the tenants of the Eastern State Penitentiary by night. How do they provide for incipient insanity? How?

But we must not lose sight of the "great and extraordinary change," and the use to which the ingenious author of the pam-

phlet has put it. It may be clearer if we state it under appropriate heads, thus:—

*Phenomenon.*

In the fourth year, several convicts (three—four—at all events not exceeding five,) became deranged in the prison. In the sixth year there was not one!

*Explanation.*

Whenever a convict's mind began to fail, and he showed symptoms of derangement, another convict was put in the cell with him.

*Remarks by Mr. Gray.*

"The uniform success of the remedy shows the true cause of the evil, as the nature of the remedy shows its extent. Enormous indeed must that evil have been, if the remedy was not worse than the disease. It is certainly a striking instance of blind attachment to a theory, of obstinate adherence to a single idea, that in order to prevent the corruption which is assumed to be the result of the few stolen words which may be exchanged during social labor, under vigilant inspection by day, convicts should be allowed unrestrained, unwatched, unlimited intercourse during the whole night."\*

But whence this idea of "night intercourse?" The physician hints at no such thing. Hospital-patients in the higher stages of insanity sometimes require day-and-night watching; but the idea of its being needful "on the first appearance of the disease," when "the symptoms of derangement begin to show themselves," probably never occurred even to the very estimable and watchful physician of the New Jersey Prison. No. The delusion is Mr. Gray's—entirely his.

Supposing this imaginary state of things to be real, however, Mr. Gray gravely states several objections to it: such as

1. That "it would lead to individual preferences and inequalities of punishment."
2. That "it provides only for those cases where alarming symptoms threaten the reason or life of the convict." He for-

gets already that the secret of the "great and extraordinary change" lies in furnishing the convict with a companion, *on the first appearance of the disease*.

3. "Prisoners of sound mind will feign insanity, and so secure intimate and unrestricted intercourse with others, *by night*," (here the delusion appears again,) "and so intercourse will, in fact, take place in those cases where it will be most pernicious, and be precluded where it would be the least so."

4. "A system which requires any exceptions at all *of this nature*, is in itself an intolerable system." This last brief objection, if sustained, would carry the system by the board, without aid from the others; but as all of them stand entirely upon a fiction of Mr. Gray's, and not upon any thing in *esse aut posse*, we shall not disturb them.

The New Jersey prison is at this day a separate prison; at least it is regarded as such by the opponents of that discipline, so far as they can use it as a witness on their side. What is its condition? By the report of 1847, we learn that two hundred and fifty three individuals were confined in it the preceding year; that only fifteen of them required punishment; only one death occurred during the year, that of a colored woman, after a short imprisonment and after a very short illness. The warden attributes the high health of the prison to wholesome and sufficient food, cleanliness, and a proper enforcement of industrious habits with all able to work. "Every day's experience strengthens my convictions of the importance of the latter to a healthy condition of the prisoners in separate confinement," (p. 25.) All these requisites are not only compatible with, but essential to the separate system, every where and under all circumstances.

And what says the physician to this state of things? "No where amongst the same number and kind of men can a better state of health be found. Attention to food, temperature, ventilation, and cleanliness; sufficient employment to keep the body well exercised and the mind occupied; that intercourse with the keepers which does away with the evils of absolute solitude; a companion in the cell in times of sickness; exercise

in the open air when required to remedy the evils of too long a confinement in the cell, all tend to insure that high state of health that has been observed in this prison for some of the past years," (p. 39.) Is there any thing in all this that the separate system, as administered elsewhere, forbids or discourages, or makes more impracticable? So far as the employment of one convict to be company for another is allowed, so far there is an obvious departure from the plain and essential principles of the system—and if an honest companion would not answer equally well, it would seem to be a necessary departure. But, as we have seen, this measure when most successful, cannot very materially change the result. Even "the great and extraordinary change" which its introduction at Trenton occasioned, reached with its benign influence but five at most, perhaps but four or three, and left one hundred and forty of the convicts in sound health!

One word more before we dismiss the New Jersey Penitentiary from the stage. In his fourth year's report, the physician says, "In this prison as much attention is paid to the health of the convicts as the nature of their confinement will admit. Wholesome food, abundantly supplied, sufficient clothing, cleanliness, and kind treatment, all tend to make their situation as comfortable as possible. When sickness requires a departure from the law, the convict has a nurse in his cell," (an honest man or a rogue, according to the views of prison economy that may prevail at the time,) "or he has the privilege of taking the air in the yard." This was the year in which there were one hundred and fifty-two prisoners, twelve of whom were deranged, and more than half of whom were fit for a lunatic asylum when they were received. Now, if "*the nature of the confinement*" would admit of no more attention to the health of the convicts than was paid when the fourth report was made, there must have been some change in "*the nature of the confinement*" before the sixth report was rendered; for the same attention to health was observed, when five convicts out of one hundred and fifty-one became insane, that was observed when there were two hundred and forty-four convicts, and not a sin-



case of disease occurred during the year! The only difference in the state of the prison, disclosed by the reports, to which this "great and extraordinary change" can be ascribed is, that a fellow-convict was placed in the cell of a patient instead of an honest nurse, hired and paid like any other officer.

We are quite satisfied, that so far as the separate principle has been faithfully and intelligently carried out in the New Jersey State prison, its fruits are all that the friends of separation could desire; nor can we account for the strange discrepancies which some of the reports disclose between the views of the inspectors and those of the physician, upon any less offensive hypothesis than the one we just now expressed—viz., that the opinions of an intelligent and faithful officer of a prison, may be so warped, if not fashioned by his theoretical tenets, as to render them an unsafe basis of judgment or legislation. It is enough for our present purpose, however, to show by it the instability of such a foundation either for argument or hypothesis. No objection of this kind could lie, however, to the opinions of a succession of medical officers, of various views and modes of practice, and often of conflicting prejudices.

The ideas which are entertained of the interior economy of a penitentiary, will also give a very decided complexion to the opinions and reports of the officers in charge of it. Suppose a case to arise (who will say that it has not occurred, or that it may not occur again,) in which the warden of a penitentiary sets his heart upon making the labor of the prisoners pay the expenses of their keeping. He has satisfied himself, (no matter on what grounds,) that more work can be produced by the same hands, and without any hazard to health of body or mind. The medical officer, on the other hand, is equally bent upon reducing the ratio of mortality, and to this end he prescribes more exercise, frequent changes of occupation and posture, and more regard to the habits and constitution of individuals in determining their employment. All this interferes with the favorite scheme of the warden, and then commences, in good earnest, the game of cross purposes. The physician (if he is like most men) will find his motives to exertion weakened, as his

plans are thwarted, and will console himself with the conviction, that whatever extraordinary degree of madness or mortality the annual bills may show, must be put to the warden's account; while the warden congratulates himself on a greatly reduced balance against, if not a generous balance in favour of the institution, leaving the physician to tell his own story. The probability is, that with the present tendencies of human nature, the warden's policy will carry the day; and a large *per centage* of sickness and death will be returned, and will be quoted against the system of discipline, when, in fact, the system is no more responsible for it, than for the state of the cotton market, or the flight of the clouds.

But the prolific source of the uncertainty that attends all comparisons of the mental, as well as bodily health of two penitentiaries, distant from each other, administered on different principles, and containing a different class of convicts, is (as we have before intimated,) the indeterminateness of the rule by which the state of health is ascertained. As we shall have occasion at a future stage of our inquiry to adduce abundant evidence of this, we shall, *pro hac vice*, assume it.

Protesting for the reasons now stated, and for others not needful to state, against all comparisons, such as we have described, and against all deductions and theories which are based upon them, we proceed to inquire what the history and condition of the Eastern State Penitentiary *actually reveals* to us, of the influence of the discipline there employed, on the minds of convicts. And we will pursue the same course that was pursued in the other branch of our investigation, and introduce a succession of witnesses—the very best which the nature of the case admits—men whose position and circumstances have been most favorable to a correct observation of the physical and mental phenomena which each individual case presents, and whose testimony must be conclusive on this point, as it was on the other, until impeached or contradicted.

DR. FRANKLIN BACHE.

Q. What length of time were you employed as physician of the Eastern State Penitentiary?

A. From the opening of the institution in 1829, to the close of the year 1836.

Q. Will you please to state what you know respecting the effects of the separate system of discipline, as administered in that institution on the **MINDS** of convicts?

### 1830-31.

I find a memorandum, dated January 1, 1831, fifteen months after the reception of the first convict, and which I made at that time as follows: \* "The effects of separate confinement on the mind, among an average of thirty-one convicts, have been attentively watched, and no instance has yet occurred of the production of mental disease."†

### 1831-32.

The mode of discipline by separate confinement, was carefully observed in 1831, on an average of sixty-seven convicts, and was not found to produce disease, nor was any mental affection superinduced.‡

### 1832-33.

During the year 1832, four cases of insanity occurred, among an average of ninety-one convicts. Two of them, however, were clearly insane when received, and were discharged in the same state. A third, I am satisfied, as well from my personal observation as from extraneous evidence, was unquestionably insane when committed, and destroyed his own life in a paroxysm of insanity. The fourth was on the verge of an attack of *mania* at the time he came in. Only four weeks after his admission, symptoms of insanity were apparent, and two weeks later, he was so violent as to require extreme measures of restraint, such as were quite unsuited to his case, but as appropriate as any thing which a prison can be expected to furnish for the case of a lunatic. Nothing is connected with either of these cases to justify, in my apprehension, any doubt of the propriety or humanity of the system.§

\* It will be understood that in this, as in the former case, the testimony is substantially gathered from the reports to which reference is made.

† Second Rep. E. S. P., p. 15.

‡ Third Rep. E. S. P., p. 7.

§ Fourth Rep. E. S. P., p. 8.

## 1833—4.

On the 1st of January 1834, I carefully reviewed my connection with the institution for the preceding four years and more, and I am constrained to say, that the peculiar mode of confinement, so far from being injurious to the health of convicts, is generally beneficial and a decided improvement in this respect on modes pursued in other prisons. It may be true, as some reporters have alleged, that in consequence of the isolation of the prisoners from each other and from the world at large, the convicts were not aware of the dreadful scourge which swept over our land that year in the form of the Asiatic cholera;\* but the same isolation protected them from the calamity;† not a solitary case occurred within the walls of the Eastern State Penitentiary! How apt an analogy this circumstance suggests between the physical and moral tendencies of separation, it is not my province to determine. I am bound to say, however, that the experience of this year (1833) being founded on the observation of a larger number of prisoners, (an average of one hundred and twenty-three,) is more valuable than that of any preceding year. There was only one case of insanity, and no circumstances connected with that case led me to attribute it, in any degree, to causes peculiar to our separate mode of confinement.‡

## 1834—5.

The year 1834, gave us an average of one hundred and eighty-three convicts, and but two cases of insanity were present during the year. One of these was insane when received, and discharged in less than twelve weeks, unimproved. No other result was promised or could have been expected. The other was supposed to be in sound health when committed, but satisfactory evidence was afterwards furnished that he was insane before conviction.§

\* Mr. Gray's quotation, p. 46.

† In the Arch street prison this disease raged, at the same time, with a fearful mortality.

‡ Fifth Rep. E. S. P. p. 6, 7.

§ Sixth Rep. E. S. P. p. 9.

**1835—6.**

No case of aberration of mind appeared in the Eastern State Penitentiary in 1835.

**1836—7.**

In 1836, with an average of three hundred and sixty convicts, I had not a single case of mental disease to report.

From a review of Dr. Bache's testimony, (which here closes,) we find that up to January 1, 1837, being six years and three months from the admission of prisoner number one, and on an annual average of (say) one hundred and sixty-five convicts, there was not "*one single solitary case*" of disease of mind chargeable to the institution, or that could be regarded as in the remotest degree attributable to anything in the discipline employed therein.

*Recapitulation of Dr. Bache's testimony.*

Year.	Average.	Cases.
Dec. 31, 1830,	31	none.
1831,	67	none.
1832,	91	4 Neither of them originated in the prison.
1833,	123	1 Not attributable to mode of discipline.
1834,	183	2 Neither originating in the prison.
1835,	266	none.
1836,	360	none.

**DR. WILLIAM DARRACH CALLED.**

**Q.** When did you take charge of the medical department of the Eastern State Penitentiary?

**A.** I began with the year 1837.

**Q.** Will you state what you observed during your incumbency, to show the influence of the separate confinement of convicts, as practised in that institution, on the state of the mind?

**A.** My manner of observation, and the terms I use, are perhaps peculiar to myself. I employ the term *dementia*, to denote a state of intellectual weakness produced chiefly by prison habits, especially among the lowest and most depraved class of colored prisoners, soon after they are separated from all

opportunity of sensual indulgence in other forms.\* The effect of these practices, (whatever may be the victim's grade of mind,) is well known. But the habits to which I allude are as likely to occur under one form of prison discipline as another, provided the class of convicts is the same. Though the opportunity of indulgence may be more constant in the separate than in the associate prison, it is sufficient in all to allow of the full extent of mischief which has ever been charged upon any.

### 1837-38.

In 1837-8, on an average of three hundred and eighty-seven convicts, there were fourteen cases of *dementia*, as I have above defined it, every one of which is referable to the secret vice. All but two of the fourteen were discharged cured, and one of the two is convalescent.†

If it is true that the separate prison affords more hours of privacy in which to indulge destructive habits than are found under the associate discipline, let the consideration have full weight. But that the separate mode of confinement is not to be held responsible for this class of maladies, appears from the fact, that the sufferers are almost without exception *cured in the prison*; and unless the discipline has the rare quality of combining in itself the bane and antidote, and of keeping both in operation at the same time on the same subject, the cases of what I have called *dementia*, (in our institution at least,) must be ascribed to some cause entirely independent of, and unconnected with any peculiarity of discipline.

### 1838-39.

My two first years' observation as physician, leads me to the opinion, that cases of mental disorder, among the prisoners, are generally of short duration, curable, caused by secret vice and occur mostly among colored convicts.‡

In 1838-9, there were eighteen cases of mental disorder in an average of four hundred and one convicts, viz. eight whites in an average of two hundred and forty white convicts, and

\* Tenth Rep. p. 17, &c.

† Ninth Rep. E. S. Penitentiary, p. 12.

‡ Tenth Rep. p. 15.

ten colored in an average of one hundred and sixty-one colored convicts. Of the eighteen cases, thirteen were entirely cured, and only *one* remained on the list at the date of the report.

So that thus far, in my term of service, I was fully prepared to say, that the separation of the convicts, as practised in this Penitentiary, does not tend to disorder the mind. If this feature of the discipline could justly be charged with producing such effects on the mind, it must have done it in the case of ten prisoners, in the year 1838, after an average confinement of five months and twelve hours, whilst hundreds of prisoners, some of whom have been subject to the same discipline for years, have been already discharged from the institution in a **BETTER STATE OF BODY AND MIND** than when they entered it.\*

#### 1839-40.

Twenty-six cases of mental disorder occurred during the year 1839, in an average of four hundred and eighteen convicts, and were equally divided between whites and colored, or thirteen to each. Of the whites ten were cured or relieved, two were pardoned and sent to the alms-house, one of whom was diseased in mind when received by us. Only one of the thirteen remains in a diseased state, and he was a subject of mania-a-potu when admitted.†

Of the thirteen colored all but one owed their state of mind to secret vice, and were either cured or relieved in the prison. The excepted one is a runaway slave, the form of whose disorder is rather moral than intellectual, and therefore I call it *deviltry* rather than insanity. His destructive disposition continues. Another year's experience satisfies me, therefore, that the separate system of discipline is not chargeable with any injurious influence on the mind.‡

#### 1840-41.

The mental disease of the prison was precisely half as much in the year 1840, as in 1839—being thirteen in all, upon an average of four hundred and six convicts. With four excep-

\* Tenth Rep. p. 18-19.

† Eleventh Rep. E. S. Penitentiary, p. 29.

‡ Ibid. p. 31-36.

tions, (two white and two colored,) they were all caused by secret vice, and readily yielded to medical treatment after periods ranging from two to thirty-two days. One of the excepted cases was from the Philadelphia House of Refuge, and in the very lowest stage of moral depravity, and the other was admitted as an imbecile, and discharged by pardon in the same state. Of the two colored exceptions, one is the victim of confirmed habits of secret vice, and the other manifested the same kind and degree of derangement before he was committed. I cannot, therefore, find any thing in the results of this year in the least degree unfavorable to the influence of the separate system as administered in the Eastern State Penitentiary.\*

#### 1841-42.

Another year's observation confirmed me in the opinion I have before entertained and expressed—that whatever mental disorders originate in the prison, are produced by secret vicious habits. As these habits, and the provocatives to their indulgence are discovered and correctives applied, the disorders themselves decrease or disappear. In 1839 we had twenty-six cases; in 1840 twenty-one, and in 1841 only eleven. Such cases as do occur in the institution are quickly curable, and when we are relieved of those who are sent to us in an insane state, (for want of a more suitable place of safe-keeping,) the separate system must be exonerated from even the suspicion of originating disorders of the mind by any thing in its discipline or administration.†

#### 1843-44.

There were six cases of hallucination among the whites, and seven among the colored. Two of the thirteen cases, I regarded and registered as cases of mental debility; but nothing occurred in this, the last year of my service, to modify my opinion of the healthfulness of the separate system, as it respects mind or body.‡

\* Twelfth Rep. E. S. Penitentiary, p. 20—24.

† Thirteenth Rep., p. 18—19.

‡ Fourteenth Report E. S. P., p. 19.



## Recapitulation of Dr. Darrach's testimony :

Year.	Average.	Cases.	Remarks.
1837.	387	14	12 cured.
1838.	401	18	All cured but one.
1839.	416	26	Only one diseased at report.
1840.	394 (406?)	13	Nine cured.
1841.	347	11	
1842.	342	13	

## DR. EDWARD HARTSHORNE CALLED.

1843-44.

I was the first *resident* physician at the Eastern State Penitentiary, and had charge of the department from April 1, 1843. to July 1, 1844. There were five new cases of insanity, in some form, during the year 1843, of which three existed, to a greater or less degree, before imprisonment, and two of them were cured; one of the remaining two was a hypochondriac when received, and scarcely deserved to be called a subject of hallucination. Only one was affected at the date of the report.

After a close observation of the effects of the mode of discipline on the minds of convicts, I became satisfied, that instead of stupifying the intellect, its tendency is rather in the opposite direction; and so far as cases of derangement have occurred, I am confident that they have either originated without the walls, or have arisen from causes unconnected with the peculiar mode of confinement.\* Indeed, much of the mental disease reported here is so trifling that, under a less faithful supervision, or a less rigid *individualizing* system, many cases which we have distinctly reported would never have been heard of. Hence I place no reliance on comparisons between the separate system, which so remarkably facilitates the discovery of the slightest alienation of mind, and the associate system, the effect of which is necessarily to keep all eccentricities out of sight, until they become manifest in paroxysms of violence, that force themselves upon the view of all.

\* Fifteenth Rep. E. S. Penitentiary, p. 33-4.

To show how much the Eastern State Penitentiary suffers from the practice of sending thither persons already insane, it may be stated, that nineteen cases of defective intellect (imbecile, idiotic, demented and insane) were admitted in the single year 1843.\* As it respects the remaining period of my engagement, extending to July 1, 1844, I can only say that every day's experience increased my confidence in the working of the system.†

DR. ROBERT A. GIVEN.

1844-45.

I succeeded Dr. Hartshorne, as resident physician, and had charge of the medical department from July 1, 1844, to the present time. Though only half the year belongs to me officially, my testimony respects the whole year, so far as its history and results are known to me.

Twelve convicts were admitted in a state of insanity, and only three cases of mental disorder can be considered as in any sense originating in the prison. One of these was notoriously addicted to secret vice, and is much improved under the discipline. Another was the offspring of an insane mother; and the third was sane when admitted, and has entirely recovered his former state.‡

1845-46.

I do not think any penitentiary in the country, of any class, surpassed the Eastern State Penitentiary, in respect to the mental health of the prisoners in the year 1845. Eight cases of insanity were developed in the course of the year—four of them were in good health when admitted, and two of these were cured. Two of the eight had insane mothers. One was epileptic when received, and the form of his mental disease was melancholy. All but two of the eight cases of the year, are accounted for, either by hereditary transmission, by the frequent occurrence of mental disorder before imprisonment, or by the presence of another disease, that almost invariably leads to insanity under any circumstances. Eighteen months' studious

\* Fifteenth Rep., p. 34.

† Sixteenth Rep., p. 41.

‡ Ibid., p. 52.

daily investigation of the subject, irresistibly forces upon my mind the conviction, that separate confinement with labor, &c., as adopted in this institution, is not prejudicial to the mental health of the prisoner.\* I have carefully examined each case that exhibited even the lowest symptom of derangement, and I am not aware of a single influence (indispensable to the discipline of separate imprisonment) that could be likely to derange a healthy mind.†

#### 1846-47.

The year 1846, was replete with satisfactory evidence of the wisdom and healthfulness of the discipline of the Eastern State Penitentiary.‡ It is true, several insane convicts have been sent to us, and recovered—and nine cases of insanity have occurred within the institution, six of which were colored. Of these nine, however, one has recovered, and two are convalescent. Five of the remaining six, I have every reason to believe, were subject to insanity at a previous period of life; and the last of the nine, I am persuaded owes his derangement to self-abuse. So that I do not hesitate to say, that the separate system, administered in accordance with the received principles of hygiene, so far from weakening or destroying the mind, will on the contrary, counteract some of the obvious tendencies to mental disease, and restore, even convicts with infirm minds, to society, with faculties strengthened and improved.§

#### 1847-48.

The next year we reported ten cases of insanity on an average of two hundred and ninety-four convicts, and what is very remarkable, eight of them were white. The subjects ranged in age, from twenty-two years to sixty-two; the length of their sentences, from two years to ten; and the periods of their confinement at which insane symptoms appeared, from eight months to six and one-third years. One of the ten cases, however, does not properly belong to the current year, and several

\* Seventeenth Report, p. 56.

† Eighteenth Report, p. 47.

‡ Ibid., p. 63. 65.

§ Eighteenth Report, p. 61.

of the remaining nine were unquestionably below the average standard of intellect when received, though none of them could be considered as insane, in the common acceptance of the term. One of them is said to have feigned insanity in the county prison. Perhaps it was not feigned, but if it was, it became real afterwards. Of another, there is good reason to believe that the crime for which he was sentenced, was perpetrated in a paroxysm of *mania-a-potu*. A third had a weak mind originally, and was besotted with all the vices and excesses to which a sensual nature could incline him; and a fourth had a sluggish, uncultivated intellect, and a strong hereditary tendency to insanity. Another year's rigid observation of the working of the separate principle, has satisfied me of the correctness of an opinion formerly expressed, that the mortality of the Eastern State Penitentiary, low as it is, could be reduced very greatly without the slightest infringement of the principle of separation; and as it regards MENTAL HEALTH, I repeat the same conviction, with even greater *confidence* in its truth.\*

Recapitulation of cases under Drs. Hartshorne and Given:

Year.	Average of convicts.	No. of cases developed in the year.	Remarks.
1843,	334	5	Only one remained under treatment at date of report.
1844,	360	5	Two of the five were entirely cured; a third improved—a fourth is a case of hereditary disease.
1845,	319	8	All but three predisposed to mental disease.
1846,	326	9	Five of these were subject to insanity before commitment.
1847,	294	10	One not properly of the present year—and of the other nine, four were highly susceptible of mental disease at admission.

THIS, then, is our testimony. Were it necessary, it is in our power to produce a volume of supplementary evidence from inspectors—from successive wardens—from overseers—from official visitors, and from convicts themselves, fully confirming

\* Nineteenth Report, p. 40-1.

every jot and tittle of that which we have received from the medical officers. But it would only serve to strengthen what is strong enough already, to convince all who are open to conviction; and those who do not yield to what we have offered, would be proof against any testimony that human lips could utter.

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## SECTION VIII.

### REVIEW OF THE EVIDENCE AND REMARKS UPON IT.

THE witnesses are now surrendered to our opponents, with equal facilities for cross-examination, which we have had for their examination-in-chief. They are competent, credible and unimpeached. They know the facts of which they testify better than any other men in the world can know them. They are all living, and in the exercise of their professional functions, from day to day, in the city of Philadelphia. Make them speak a different language if you can.

We think we have shown, by the best evidence of which the nature of the case admits—(1.) What the separate system, established by law in the State of Pennsylvania, really is. (2.) That, (to say the least,) it is quite as conservative of the life and health of the subject of it, as the congregate or any other system. (3.) That there is nothing in the mere separation of convicts from each other, as prescribed for the Eastern State Penitentiary, (or elsewhere, so far as we know,) tending in the remotest degree, to alienate or weaken the minds of convicts; and, (4.) that whatever seeming excess of mortality or insanity may be alleged against the Eastern State Penitentiary, it results either from the more strict sanitary regulations which are enforced there, and which bring to view every degree of disorder of body and mind; or from the peculiarly morbid state, physical and mental, in which a large class of its population

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are found at their reception, or from both these causes combined. So that were the same class of convicts, subjected to the opposite discipline, with the same minuteness of oversight and particularity of report from the medical officer, the tables would be turned; and whatever might be disclosed respecting the penitentiary at Charlestown, or elsewhere, the discipline of the Eastern State Penitentiary, would be seen in its true light, as the conservator of bodily health, as well as of mental soundness and vigor.

If the position taken by the opponents of the separate system is tenable, there is testimony to sustain them in it, and they are bound, in their turn, to produce the best which the nature of the case admits. Our witnesses are unimpeached. We venture to say that no ingenuity or severity of cross-examination, can draw from one of them an inconsistent or contradictory syllable. How is their testimony met?

So far as actual deaths are concerned there can be no controversy. We admit that convicts have died in the Eastern State Penitentiary, though we deny that the mortality there, has been greater than in any other prison having a similar class of convicts—we mean similar in respect to health and constitution, when admitted. Our witnesses have proved conclusively, that a very large proportion of the deaths have been from diseases contracted before admission, and which must have had the same fatal development to whatever system of discipline the parties might have been subjected.

True it is also, that some prisoners have been discharged from the Eastern State Penitentiary in less perfect health than when received. That institution has never claimed confidence as an asylum for the insane, nor as an hospital for the sick. Is there any penitentiary whose convicts are *all* discharged in improved health, or that discharges an equal number in as good health? We have shown, however, by competent testimony, that the Eastern State Penitentiary has actually contributed health and not sickness to the community at large. In other words, if it were the subject of an account current between the prison and the public, there would be a clear yearly balance

in favor of the former. How such an account would stand between the best associate prison and the public, we have no means of determining, nor would a determination be of any value, unless precisely the same health-meter were employed with equal fidelity, as in the other case. So that we may safely challenge the opponents of the separate system to produce a tittle of evidence that, with the like class of prisoners and like rules of determining their physical condition from day to day, a greater per centage of health would be shown in any penitentiary or prison in the United States, than is shown in the Eastern State Penitentiary.

This is not mere assertion—for we have *proved* our side of the proposition. Where is an equally minute and satisfactory exhibit of the actual condition, in respect to health, of any American penitentiary on the associate plan? Produce one hundred, or even ten men, now abroad in the world, who have spent three, five, or seven years in the Eastern State Penitentiary, and the same number who have passed an equal period of time in the Auburn, Sing-Sing, or Charlestown penitentiaries, and if it be true that our system is so prejudicial to health, it will plainly appear. When it was proposed to the royal captives in the court of the king of Babylon, that they should partake of the provision of the king's table and of the wine which the king drank, they objected to the fare, and preferred a vegetable diet and pure water—and it was agreed to try the experiment ten days. At the end of the period assigned for trial, the children nurtured at the royal table and the children who ate pulse and drank water were placed side by side, and the countenances of those who contented themselves with the simpler fare, were "fairer and fatter in flesh than all the children which did eat their portion of the king's meat." The test we propose, therefore, is not new. We have annually discharged from the Eastern State Penitentiary many scores of convicts. Enough of them can be found to show what has been the effect of the discipline there suffered, upon their minds and bodies, and if they are such as our opponents allege, the evidence will be ocular and irresistible. We maintain, confidently, that no testimony

short of this should be admitted or offered, until it is shown that due diligence has been used to procure this, and without success. We affirm and have proved, by the best possible testimony, that the great mass of convicts who have been discharged from the Eastern State Penitentiary were discharged in good health, and, on the whole, in better health than when received. The presumption is, that they are now in good health, and possessed of as vigorous constitutions as any other men. This presumption can be rebutted only by the best evidence which the nature of the case admits, and that obviously is the production of the identical men themselves, that their countenances may be looked upon, and their bodily condition seen and known.

In respect to the alleged tendency of the separation of convicts to produce *insanity*, we must insist still more strongly on the obligation of our opponents to furnish the best evidence which the nature of the case allows. We affirm and have proved, by the highest grade of testimony, that out of two thousand three hundred and thirty-three convicts received into the Eastern State Penitentiary, not one in a hundred have become insane after admission. Our opponents have charged upon the institution and upon its peculiar discipline, not only all actual cases of disordered intellect, which are found within its walls, (though the reports on which they rely for their evidence show, on the same page, that many came thither stark mad; many brought with them the elements of insanity, which would have been as readily wrought into form under one system as another; and the great majority were completely cured by the same process which is charged with having caused their disease;) but they go farther, and ask (no one can fail to see with what intent) whether it is possible that all those who have not attained the fatal consummation—death or insanity—are full of health and vigor, and able to go forth and battle manfully with the world? “It cannot be,” say they; “many more must be treading the dark and downward path, who are yet more or less distant from its end. It is the natural, nay, it is the necessary presumption, that a mode of treatment which utterly destroys the health and reason of so many, cannot less



those of others entirely unimpaired. Is it consistent with justice or humanity," they then ask, (as if the case had been all proved, out and out;)"—"is it consistent with justice or humanity to inflict a punishment which has this tendency?"\* The same idea is echoed by the *Christian Examiner*; "None but cases of actual insanity are reported," they say; "but how many cases of weakened nerves and half-disordered minds must there be, in those solitary cells, of which no notice is taken in the public reports?"†

Such a style of argument addressed to a shallow magistrate or to an imbecile jury, might be in place and have its virtue; but it is quite unbecoming an intelligent and sincere philanthropist to use it in attempting to shake public confidence in a great system of prison reform, which has awakened more attention, and enlisted more intelligence and wider interest and favor in its behalf, than any other scheme of discipline for prisoners ever yet known.

Be this as it may, we have adduced the most conclusive evidence to show that the separate system, as administered in the Eastern State Penitentiary, does not, to say the least, more injuriously affect the minds of convicts than the associate system, as it is administered at Charlestown, or elsewhere—supposing always the same class of persons to be subjected to each, and the same rule of judgment to be adopted in determining their state. Our opponents deny this, and assert that the treatment of convicts in the Eastern State Penitentiary "does, in fact, utterly destroy the health and reason of so many of them as to warrant, and even to force the presumption, that many more are treading the dark and downward path, and will sooner or later reach the same fatal end!"

This is not a matter that needs to be left to presumption, however. Some of those unhappy creatures, with shadowy forms and wild and haggard looks, who are described as treading their certain way to Bedlam, or to the grave, are yet alive, and many of them occupying a place upon the surface of the

\* Gray on Prison Discipline, p. 114.

† P. 281.

State of Pennsylvania. That we may put inquirers in the way of obtaining information, we may state that it is by no means an uncommon thing for the inspectors of the Eastern State Penitentiary to receive applications from convicts, who have been at large and leading an honest life for a series of years, to intercede in their behalf with the executive of the State that the infamy of their conviction may be removed by a pardon. Many cases have been known of the like interposition of friends and acquaintances, who have been witnesses of the sober and orderly life which has been led by their once degraded but now reformed neighbors. So that there need be no difficulty in finding the men if they will answer their purpose. Some of them, we have been credibly informed, (we hope our healthful discipline has led most of them to a better lot,) have fallen into the "great manual labor school" at Charlestown, and have done their three hundred and thirteen stout days' works in a year, for the Commonwealth of Massachusetts.

At all events **THEY CAN BE FOUND**, there or elsewhere, and until found and produced no secondary evidence respecting them,—certainly no *presumption*,—is admissible for a moment. If only one is brought forward as a specimen of the "many," whose "health and reason" are alleged to be "utterly destroyed" by the separate system of discipline which they suffered in the Eastern State Penitentiary; or only one of that other indefinite number, who are "treading the dark and downward path," we can then see for ourselves what his mental state really is, and can at once turn to the records of the institution and ascertain in what state he was when received under its discipline, what was his condition from day to day while there, and how he was when discharged. We can follow him thence, perhaps, to Auburn, or Sing Sing, or Charlestown, and may possibly find that he was goaded to madness by the cat-o-nine tails, or the douchè; or that he plotted an escape in which he was foiled, and for which he suffered the full measure of punishment, or that he was betrayed and made desperate by an old prison acquaintance, and so returned to "durance vile."

If "presumptions" were in place at all on such a subject, we

should "presume," that of all the convicts annually discharged from the Eastern State Penitentiary, (some already ruined in body and mind, and others inevitably doomed by the severity of the treatment, to the same fate,) many would have found their way into hospitals, insane asylums, or county poor-houses, where the origin of their maladies would be sought and known. Their friends, their old neighbors, the judges, jurors, lawyers, and constables—do none of them know of a *single case* of insanity, or mortal disease, that can be traced, clearly and directly, to the SEPARATION OF THE SUFFERER FROM HIS FELLOW-CONVICTS, *while confined in the Eastern State Penitentiary?* Not one! No, not one! We doubt whether the wide world can produce any such case; and, in the absence of all evidence, may we not "presume" that such cases exist only in the fancy of an amateur philanthropist?

We feel constrained before concluding this section of our inquiry, to refer to a foreign document, of which much has been made by the anti-separatists—the report of Doctors Abercrombie and Christison, "on the state of mind of the prisoners in the General Prison at Perth, Scotland," made to the General Board of Directors of Scotch Prisons, in the spring of 1844, and published at length in the Twenty-second annual report of the (Boston) Prison Discipline Society, as a "most important document," under the title of INJURIOUS EFFECTS OF SEPARATE CONFINEMENT *in the General Prison for Scotland at Perth*. The discipline of that prison consists in the COMPLETE SEPARATION of the prisoners by night and by day, in large airy cells—employment at various trades—with remuneration for work beyond a certain daily task—instruction in reading, writing, and arithmetic—religious education, and about eighty minutes of walking exercise daily in separate airing yards. This, with the substitution of sixty for eighty, will be in substance a fair account of the discipline prescribed for the Eastern State Penitentiary.

Notwithstanding the very significant caption with which the Scotch document is surmounted by the author of the American report, some magical influence must be employed to pervert the judgments of men before it will impress them unfavorably

towards the separate discipline. The more closely it is examined the more strongly will it be seen to favor separation. Of ninety-eight females, who, at the time of the visit of the commissioners had been for some time subject to the discipline, "only one was affected with mental disease; and this, if any thing more than a case of hysteric nervousness, was probably an imposture or exaggeration of her complaint." And in respect to the male side of the prison, they say that "a fair analysis of the cases supplies no decided evidence that the separate system has hitherto materially injured the minds of male adults." That it is unsuitable, in its strict application, to children, or persons of tender years, needs not the evidence of a single experiment.

We venture to say, that if the report of the Perth commissioners had been published in connection with some document advocating separation, it would have been regarded as quite in place. It is *association* that gives it its mischievous power. *Separation* would render it quite harmless. Apart from its juxtaposition it would only show that juvenile convicts (an unusually large number of whom are found in that institution) cannot bear a severity of discipline which might be, not only harmless but wholesome, for adults.

## SECTION IX.

## MEDICAL PRACTICE IN A CONGREGATE PRISON.

WE propose now to turn the tables and see whether the preceding argument, which we think is conclusive in FAVOR of the separate mode of discipline, may not be used with equal appropriateness and force, AGAINST the congregate.

As there is nothing in the nature of convict-separation, which makes it probable, *a priori*, that it should produce mental derangement, so there is nothing in the nature of convict-association (without intercourse) which makes it probable, *a priori*, that it should not produce it,—at least, as certainly and to the same extent as any other system of convict restraint. On the contrary, it is highly probable, that in any group of two or three hundred men, taken from the classes of society that chiefly supply all our prisons, there would be one or more of unsound mind. If, therefore, it should be affirmed concerning any penal institution containing such a number of convicts, that not a single case of insanity had occurred during the year, the presumption would be warranted that the medical officer had failed to observe cases of this kind, or that he had not regarded them as such, or that he had, for some reason, withheld a knowledge of them from the public. Such a presumption, however, is, by itself, of little weight—and our readers will remember that we so regarded the presumption which Mr. Gray raised, that the reports of insanity from the Eastern State Penitentiary, do not reveal the whole mischief which the separation of one convict from another, works upon body and mind; but that others, who have not yet reached the fatal consummation of death or madness, are “treading the downward path” that leads thither. We insisted on some authentic details, to give color to such a presumption—and we asked nothing which we are not prepared to give. We affirm, that if a penitentiary, on

any plan of discipline, reports no cases of insanity among three hundred convicts in the lapse of a year, while another, on any other plan, reports ten among the same number and in the same time, the presumption (in the absence of any local or temporary cause of the difference,) is that the latter reports fully and faithfully, while the former, through inadvertence, or from some peculiarity of views of practice or duty in the medical department, withholds information on this point.

But we do not rest in presumption merely. We adduce an item or two of direct testimony which it will be difficult for our opponents to refute. It is as follows:

The commissioner appointed by the New York Prison Association, to make a report on the prevalence of convict insanity, says—"Whilst inspecting the prison at Auburn, we were struck by the GREAT NUMBER of individuals affected by mental aberration, whose cases appeared to have quite escaped the Doctor's observation. Some few of the MOST EXCITABLE, were, we understood, under treatment."\*

Again they say:—"The experience of the past year, as also that of preceding years, and THE FACTS OBSERVED IN ALL OUR PRISONS, tend to confirm us in the opinion already stated, that cases of mental derangement are MUCH MORE FREQUENT IN THE PRISONS ON THE AUBURN SYSTEM, THAN ARE MENTIONED IN THE REPORTS."†

This is all we claim; and the evidence, it will be observed, is virtually from the opposite party.

But there is another and a less offensive mode of accounting for the anomaly we are considering, than to ascribe it to inadvertence or purposed concealment.

We have said, in the commencement of the present inquiry, that the principles on which a judgment is formed of the physical and mental condition of two groups of prisoners, in different penal institutions, and subject to different modes of discipline, cannot be applied with fairness or safety, so long as the appearances which would be regarded in one prison as consti-

\* Third Rep. of the New York Prison Association, 2nd part, p. 94. † Ibid., p. 35.

tuting a well defined case of disease of body or mind, in another would hardly excuse a convict from his daily task.\* As in the absence of any common standard, all comparisons of this nature, are worse than idle; and as the chief reliance of modern objectors to the separate system, is upon such comparisons, especially touching the grand points of mortality and insanity,—we propose to adduce evidence from a single, but prolific source, that a wide difference in the rules of judging and in the application of these rules, does actually prevail, and may serve, in some degree, to explain what would otherwise be painfully inexplicable. And though the occurrence which brought our evidence to public view, is deeply to be deplored—the evidence itself, is opportune and invaluable, and could not have been more appropriate or satisfactory, had we been allowed to frame it specially for our present use.

We crave the indulgence of our readers, if we should seem to attach undue importance to this single insulated case. It is the *pes Herculis*—and we must depend on a minute anatomy of this inferior member, to form a judgment of proportions that are not revealed.

At the February term (1844) of the Supreme Judicial Court of Massachusetts, held at Boston, *Abner Rogers, jr.*, was tried for the murder of *Charles Lincoln, jr.*, warden of the State Prison at Charlestown, on the fifteenth day of June preceding. Mr. Lincoln was appointed warden April 24, 1832, and in the succeeding March, Rogers was placed under his care upon a sentence of one day's solitary confinement, and two years' hard labor, for possessing, with intent to pass, a counterfeit bank-note. He served his time out, and in March 1838, he was re-committed for burglary, on a sentence of one day's solitary confinement, and five years' hard labor. At the close of this second term, to wit, March 1843, he was sentenced to six months' additional imprisonment, under a wholesome statute for the punishment of re-convicted felons. So that he was in the

\* See this position maintained with great force by Dr. Hartshorne, in the Sixteenth Report of the Eastern State Penitentiary, p. 43-4; and by Dr. Given in p. 63 of the Seventeenth.

same prison and under the care of the same warden and physician, for the space of seven years and three months.

The following connected sketch of the history of the man, gathered from the uncontradicted testimony produced on his trial, seems to be needful to understand the case and the application of it. He was born in December 1813. The night after his birth, he had a fit and was supposed to be dead. He was from that time, a sickly child. Fits continued till he was six or seven years old. His mind was uncultivated. He had an older brother, Beniah, who was deficient in understanding, and prone to mischief, especially to injure small children. Beniah was carefully watched, but when he was about seven years of age, and Abner about three, he took advantage of his mother's absence, and seizing an instrument not unlike a sickle, formed of a piece of scythe and used to cut corn-stalks, attacked his brother with it, giving him a deep slit through the nose, and a less severe wound in the forehead. Beniah was confined to a chair till he was thirty years old. There was also an aunt of the family, who was crazy at two different times—the first time, she was so from two to four months. A great uncle and aunt by the mother's side, were reputed to be crazy. Another uncle often complains of having "the noise of crickets in his head"—and another uncle has fits, being always more or less deranged before and after them, and needing to be constantly watched.

Abner left home at about eight years of age, to live with an uncle; and after two or three years, he boarded about at different places, and worked at shoe-making. Those with whom he lived at this period, say that he used to walk the room or the street, frequently, for a large part of the night. He was still subject to fits, to pains in his head and to strange delusions.\*

\* These circumstances would, perhaps, go but little way to raise a presumption precedent of insanity, but they are of much importance when connected with a full, subsequent development of the disease. To see their bearing on the question, the reader is referred to the Seventeenth Annual Report of the Eastern State Penitentiary, p. 56—69, and Eighteenth Report, p. 54, and Nineteenth, p. 41.



In March 1833, being twenty years of age, he was first committed to prison, as we have before stated, on a two years' sentence. Nothing is disclosed to us of his character, conduct, or treatment during that period. We are left to infer that he served out his time, and was discharged by order of law. In March 1838, he returned on his five years' sentence, and for ought that appears, behaved himself well till October 5, 1840, a period of two years and a half, or half the term of his second sentence. He was then showered with two barrels of water,\* "for improper conduct." Two months after (Dec. 9) he was showered again with one barrel of water for talking. Then a year elapses without a recorded punishment. January 2, 1842, punished with "one day's solitary,"† for misconduct, in room. Eight days after, (January 10,) another turn of "solitary," for disorderly conduct. Nearly a year then passes without a recorded punishment. January 29, 1843, the same offence and same penalty as the last. Six weeks after this, (March 9,) he was showered with one barrel of water, for disorderly conduct. Four weeks later, (April 9,) he was subjected to one day's "solitary," for disobedience of orders. June 12, "solitary," for noise in his cell the preceding night. June 14, half a barrel of water, for disturbance in cell. June 15, (the day of the homicide,) three-fourths of a barrel, for same cause.

It would seem, from the clerk's record, that the punishment of June 13th was not noted, but it was clearly proved by one of the prison watchmen;‡ and, indeed, there is much

\* In the punishment by water, the prisoner is confined, (head, hands and feet,) and the water falls upon his head, from a height of seven feet. The apertures through which the water passes, are of such a size as to pass a barrel full in twenty or thirty seconds.

† This term is thus explained:—When the convicts are about to go to their cells for the night, any officer who has a complaint to make, notifies the warden of it, and when the delinquent comes to the foot of the stairs leading to the gallery, he is stopped, and told to step aside and have his case examined. This is called "*leaving out*." If the convict is guilty, he is deprived of his bed for the night, and is sent away to one of the cells on the lower tier, where he must pass the night on the stone floor, or upon a board covered with a blanket. This is being put into "*solitary*." (Report of Trial, p. 85.)

‡ Rep. of Trial, p. 115.

reason to apprehend that the whole record is quite too imperfect to be relied on. For a watchman who came into office September 20, 1841, speaks of "having *frequently* seen Rogers left out,"—mentions one occasion between the first of April and the first of July, when he locked him up in the "'solitary' for not doing his work right," and when he also complained very much that "the warden punished him for every little offence."\* If it should be shown that this was the same punishment with that recorded April 9, the *cause* assigned by the witness and that which is stated on the record, are certainly not identical. But it appears, by the testimony of one of the government's witnesses, that in September 1842, in a conversation with the barber, (also a convict,) that Rogers had been showered that morning—that he was punished very frequently, and blamed the warden for it, and spoke of being "left out" as a recent grievance.† Nothing appears on the clerk's record to indicate the infliction of any punishment between July 10, 1842, and January 29, 1843.

Let this suggest whatever inferences it may, the burden of the testimony, from those who worked with him most and knew his habits best, is, that Rogers was docile, easily subdued, steady at his work and inoffensive in his whole demeanor. It is equally evident, from the report of the trial, that a strong, deep-rooted impression was fixed on his mind, that there was a conspiracy against his life, and that *he was to be despatched under the form or pretext of some punishment*; and we do not hesitate to say, that had it been the desire and deliberate purpose of the warden, the deputy warden and the physician to supply every aid and provocative to the delusion, and to confirm and establish their prisoner in his insane conceptions of their designs upon him, they could scarcely have devised their plans with more ingenuity, or executed them with more complete success. Let us see.

As early as Thursday or Friday, preceding the fatal deed, Rogers was extremely irritated, by being debarred from "a

\* Rep. of Trial, p. 171—172.

† Ibid., p. 40.

privilege which he had always enjoyed, of walking for exercise in the yard ten minutes forenoon and afternoon." One of the foremen told him he should see the warden, and put a stop to it. A turnkey, who had charge of the shop where Rogers worked, and to whom he communicated the threat which had been just uttered by the foreman, interceded with the deputy warden for a continuance of the privilege, and succeeded in obtaining his promise that it should not be denied him "except when the work was pressing." *The warden, however, immediately afterwards, forbade the indulgence.* Upon the turnkey's remonstrating with the warden, and expressing his opinion that "the fellow ought to be allowed it, inasmuch as he complied with the regulations of the shop, as well as any other man," the warden replied, that "he (Rogers) did it (that is, insisted on the privilege) to get rid of work."\*

On Saturday, (June 10,) the overseer saw sufficient reason to send Rogers to the hospital for examination. The physician admits that he came, but is unable to say how he was received. That he did not examine his tongue, he is positive, and cannot say that he even felt his pulse.

The current of testimony shows that he had already become an object of interest or curiosity, if not of sympathy, to some of his keepers and comrades; that the warden had condemned him for false pretences we have just seen, and that there was good cause, even in the view of the overseer, to submit his case to medical inquiry. How, then, can we account for the indifference of the physician, except upon the presumption that he had settled it in his own mind, that the warden was right in his opinion of him; that he was attempting to dupe them all, and that the less notice he received, the sooner he would give up the game? Of course, we are driven to the painful conclusion, that scores of others might have been judged with the same judgment, and may have had the same measure of neglect and suspicion meted out to them!

On Sunday morning, (June 11,) being urged to do so, he ate

a little, but with a wild look and great voracity,\* and in the following night he was noisy, and on Monday evening was ordered into "solitary," as a punishment.† Yet at that time, such were the representations of his deportment made by the subordinate officers to one of their number, (Sargent, a turn-key,) that he expressed his conviction to the warden, that "Rogers was not in his right mind."‡

Tuesday morning, (June 13,) the condition of the prisoner is best represented by the officer of the ward. He says, that "about two o'clock, he heard an unusual noise, like the voice of a person in distress. The noise was very loud—the cry was a kind of groan, '*Oh, dear! Oh, dear me! I shall die! I shall die!*' and I found it to come from Rogers' cell; I put my lantern up to the grated door, throwing the light full on the prisoner's person, and saw him standing up, trembling and his hands crossed. His bed was turned up, and he was standing in his drawers. Said he, '*Oh, Mr. Gardiner, I am going to die—I am going to die!*' I told him he disturbed the whole prison with his noise, and he must be still. He said he could not help it. He had 'heard Cole and Sam Robinson say that the warden was going to keep him in 'solitary' the rest of his time; and if he did so, he knew he should'nt live.'"<sup>§</sup>

When he came into the work-shop on Tuesday morning, his look was wild and staring. One of the officers of the shop testified, "that once or twice, perhaps three or four times, Rogers came up to him and told him that the officers were 'coming some kind of game over him.' He called it the '*checkerberry* game.' They were also 'coming a *popo* game over him,' and 'that he should not live twenty-four hours'—that 'the warden was going to shut him up, and that he should not go out till he went out feet foremost'—that 'they had put checkerberry in his food, and that he had heard the men say, over his head, that he must hold his head down and sweat it off,' &c.|| That very night he was again 'left out' and sent into 'solitary!' "<sup>¶</sup>

Report of Trial, p. 121.

§ *Ib.*, p. 114.

† *Ib.*, p. 109.

|| *Ib.*, p. 102–10.

‡ *Ibid.*

¶ *Ib.*, p. 127.

He was, of course, still more excited on Wednesday morning;—came to the work-shop without cap or shoes;—looks downcast;—went to his work, but as if in a deep study. Soon after an officer came in for him, to take him to the *douche* or water-drenching. He resisted—clenched the officer, but was soon overpowered—was then taken to his cell, and soon after received half a barrel of water!

In the night succeeding, about midnight, an alarm bell was rung. One of the watchmen went down from the guard-room to ask the cause, and was informed that Rogers was making such a noise, that the men could not sleep. The watchman reported this information to the deputy warden, who said—“LET HIM BE AS HE IS.”\*

Thursday came. Rogers was still full of the impression that the warden was going to shut him up. The officer of the shop told the warden, in so many words, that he thought the prisoner was *INSANE*; to which the warden returned the pregnant caution, “*not to talk in that way, for if he did, he would have every man in the yard insane.*” In the course of the morning, Rogers requested liberty to see the physician, and the overseer consented, but upon his return from the hospital, he brought the under-scored direction already mentioned—“*Keep at work!*”

At noon, he was punished with the *douche* again—three-fourths of a barrel. In the afternoon he appeared to be “distressed and under intense anxiety about being shut up,” and “this game” which was to kill him. “He seemed to be under *very great* excitement.” Once the witness saw him sitting with his hands clasped and his head thrown back, as if in great agony, and called the attention of others to his conduct. Between four and five o’clock, he came to the overseer, to “go and see the warden, and try to get him released from punishment,” but without specifying any particular punishment. He repeated his request till the overseer told him, “it would be of no use, *as the warden had gone away.*”

The contractor of the shop was conversing with the over-

seer, soon after this, and Rogers came up to the place where they were standing, and kneeled down before the contractor. "He seemed to be in great anxiety and agony." One of the witnesses says "his voice trembled, and his hands were clasped;" and, as another testified, "he shed tears." He besought the contractor to intercede with the warden in his behalf. The contractor told him to "go to his work, or he would do nothing for him."\*

Fifteen minutes after this the warden came into the shop, accompanied by a stranger. He carried a sword-cane under his arm, as was his uniform custom. As soon as an opportunity offered, Rogers seized a shoe-knife from a neighbouring bench, and approaching from behind, clapped his left hand upon the warden's shoulder and inflicted three wounds, in quick succession, one of which was instantly fatal.

Up to the moment of this sad catastrophe, it would appear from the testimony, that the warden, deputy-warden and physician, were all satisfied that Rogers was sane and perfectly responsible; while several of the subordinate officers, who had the immediate personal oversight of him, and with whom alone he held intercourse, were satisfied that he was insane, and so informed their superiors, and even went so far as to remonstrate against his being suffered to remain in the shop! After the fatal deed, however, the question of his sanity assumed a new and critical importance.

For a few days no very important change was apparent in the unhappy man. He still talked, as he had talked before, of voices and of conspiracies against his life. His countenance wore a bewildered, unnatural look. He gradually admitted that he had killed the warden; that the voices, &c. were only imaginary, and that he must expect to suffer as an example to others.

In process of time he was tried and acquitted on the ground of insanity, and immediately committed to the Lunatic Asylum at Worcester. He was not well when received there. His countenance was pale and anxious. On the 5th, 6th and 8th

\* Trial, p. 111-12.

of February, his pulse was one hundred—restless and unable to sleep. He had a turn of excitement March 30th. Worked steadily in the intervals—attended prayers and worship. May 15th he was again excited; frequent pulse; coated tongue; bad taste in his mouth; insisted upon it that his food was the flesh of a dead human body, or that it had been poisoned with oil of vitriol; did not work much; was wild and suspicious of an intent to poison him; could not sleep for fear, considering that constant vigilance was needful to avoid being killed, but manifested no desire to injure himself or others. These various states of mind continued till, one evening at prayers and when the services were nearly over, he requested the attendant to go out with him. He was greatly agitated and apprehensive, saying to a patient who sat at his side, that “the room was full of dead bodies.” He left the apartment, and in a few minutes after, a sharp, sudden noise was heard, and Rogers was seen bolting through a window of the second story of the hospital, head first, as if in the act of diving. It was a fall of only fourteen or fifteen feet, but after lying insensible for thirty-six hours, he died. The superintendent of the institution (Dr. Woodward) expressed the unqualified opinion, that the unhappy maniac “had no idea of committing suicide. He only sought to escape from present fancied danger, and acted from the impulse of fear without regard to consequences.” Dr. W. was also impressed with the obvious coincidence between his conduct immediately before the tragedy of June 15, *and occasionally for many years previous*, and that which he exhibited after he came to the hospital, and especially the week before his death.\*

Having thus briefly sketched the leading events in the history of the miserable man, we will now return to the trial. The plea, as we have said, was insanity. The leading witness for the government was, of course, the regular medical officer of the prison, whose testimony on this occasion is of great importance in our present inquiry, as it not only shows what was his mode of judging and treating cases of this class and the general rou-

\* Trial, p. 285-6.

tine of his department, but it also furnishes some invaluable helps towards understanding the administration of the police, and the whole moral and medical economy of the institution. We, therefore, insert entire so much of it as elucidates our present point.

DR. WILLIAM J. WALKER'S TESTIMONY.

"Has known Rogers for several years; saw him on the morning of the homicide, when he came to the hospital for examination. The frequency of simulated cases of insanity in the prison induced us to establish the system of book-keeping in regard to admissions into the hospital. A book is kept in each department of the prison, in which the name of each applicant for medical aid is inserted, and this book is sent to the physician. *No man can enter the hospital without the consent of the overseer of the department in which he works.* It is the duty of the overseers to inform the physician of the facts relating to each man's illness. Upon the names being entered in the shop-books, the prisoners are sent to the hospital, where the names are taken off on the hospital record, and against each name the prescription is written, and this is again written against the name of the prisoner in the shop-book, and returned to the overseer."

[The only perceivable check that this system supplies to the abuse of hospital privileges by pretended indisposition of body or mind, is the giving the overseers exclusive primary jurisdiction in all cases; and, of course, if it answered the purpose at all, we must suppose that many cases were submitted to the overseer, and adjudged by him to be frivolous, or not to need medical care. The medical record of the prison, under such a regulation, will of course furnish no evidence, at any time, of the state of health, bodily or mental, except so far as the overseers of the several departments may transmit cases to the hospital for examination. We must suppose, however, that even this check proved a very imperfect one, or that Rogers' case was a very remarkable one, for it would appear, that between the 14th of February and the 15th of June, about nineteen weeks, the overseer felt bound to enter his name not less



than TWELVE TIMES in the hospital book, in only two of the applications would the physician prescribe any thing, and for one of these he ordered bread-pills and liquorice for the other! It is scarcely possible to suppose that the overseer and the doctor could have been trained in the same notions of pathology.]

“All applicants come to the hospital to see the physician. Several came up on Thursday morning the 15th of June, Rogers among them. He did not come the first or the last. When he came up to take his seat on the bench to await his turn, I saw his countenance. He entered composedly and walked steadily to his seat in a quiet manner. When his turn came he passed the door of my room in the same quiet manner towards me. I asked him what was the matter? He threw himself into gesticulations at once, put his hands up to the side of his head and said, I am in great distress here. ‘I am in pain all over. I am in pain right through here, and feel as if I could not govern my mind.’ I said to him, ‘I understand this: if you will do your part towards meriting kind treatment, you will receive it, but if you do not you cannot receive it.’ He became collected immediately; was attentive to my advice and went quietly away. I never saw him again until I saw him in the court-room in July. After seeing me he was sent back to the shop. My prescription for him, as written in the book was, ‘keep at work,’ and I had good reason for it. I am satisfied that he was in perfectly sound mind, and that he came to the hospital to deceive me. My attention has been particularly drawn to simulated insanity. I had thought of making a detailed report of my experience in the prison upon this subject. My reasons for the opinion I have just expressed are, that when he passed the door of my room there was nothing unusual in the expression of his countenance. He approached me at first with his common gait, and with his usual calm appearance and collected manner, and without any manifestation of distress. On making his statement to me, he threw himself into the position I have described. He did not feel the pain he pretended to have in his head. If he had, he would have walked more carefully, so as not to jar it, and his distress

would have shown itself in his countenance. He made no remonstrance against my advice. He said nothing about hearing voices. He indicated nervous excitement. I underscored the words, *keep at work*, because I believed him to be an onanist, and I wished to keep his mind occupied. I thought work was the best thing for him. I never conversed with Rogers except when he has been to the hospital. What I said to Rogers on the morning of the 15th, was based entirely on his manifest attempt to deceive me. I had no doubt through the whole that he was not really sick. I had never noticed him in the yard or chapel\* any more than any other prisoner, and knew nothing particular about him. *I did not feel his pulse on the morning of the 15th when he came to the hospital, nor can I say I did on the 10th. I did not examine his tongue.* I made such an examination as I thought necessary in his case. I always considered Mr. Lincoln's judgment a superior one in distinguishing between real and simulated insanity. He always examined a case with a good deal of care. I have never known him to mistake a case after examination. We had cases of insanity in the prison. Never heard Mr. Lincoln say that it would not do to admit that any person in the prison could be crazy. There are insane patients in the prison whom I do not attend. *I should not think it came within my province to attend to such cases.* I do attend them, as well as others who are sick; but there are no accommodations in the prison for treating insanity as such, and if not sick I do not attend them."

[How many of this class there are or were, is not disclosed.]

"There is a man there by the name of *Irving* who is insane. He was so when he came to the prison."

[It seems, from the report of the inspectors for 1843-44, that this man, Irving, was committed to that prison in September 1836, for larceny, under a sentence of three days solitary confinement and ten years hard labour. In the course of eleven months he became so insane as to require close confinement in

\* It is worthy of note, that the chaplain of the prison, who has been for a long period employed in that vocation, and is reputed to be peculiarly fitted to his work and his work to him, should not have been seen or heard in the whole progress of a trial involving so deeply the essential principles of the discipline.

one of the cells of the old prison, and remained there, year after year, up to the date of their report. The inspectors, in the same report, speak of "other cases, which might be named, though less aggravated than Irving's."]

"Others have been sent there," continues the witness, "who were insane and not proper subjects of punishment. From what I have seen of *Orman Johnson's* case, I consider it one of counterfeited insanity; but I have had no co-operation from the other officers of the prison in respect to it," (reads the record of his case, and states his reasons for prescribing for him TO BE CHAINED AND KEPT AT WORK AT THE GRIND-STONE.)

"Previous to the morning of June 15th, I had not heard that Rogers had been insane, or pretended to be. He only said to me, 'I cannot govern my mind.' I concluded he was trying to pass himself off as an insane man. Have no recollection that Rogers ever made any such complaints before. Always thought he came to the hospital for trivial purposes. I know of but two cases of real insanity, which have occurred in prison, and which originated there. Perhaps there have been twenty cases altogether, including those who came there insane. Mr. Lincoln always examined cases with the utmost care. We have had five or six cases of systematic attempts to simulate insanity in the prison.

The following is given as a transcript of the Hospital record, relating to Rogers, from February 1, 1843, to the time of the homicide:

February 4.—Examined and not prescribed for.

" 13. " " "

" 18. " " "

March 22.—Two bread-pills. March 24—liquorice.

April 15.—Better without medicine. May 8th—ditto.

May 11.—Examined and not prescribed for.

" 27.—Reported, but did not come.

June 3.—Physician did not attend.

" 10.—Examined and not prescribed for.

" 15.—Keep at work.\*

\* Trial, pp. 30-33.

## SECTION X.

BRIEF REVIEW OF THE MEDICAL PRACTICE IN TWO PRISONS  
EMPLOYING THE OPPOSITE MODES OF DISCIPLINE.

IN the preceding section, we have given what may be regarded as an authorized exposition of the principles on which the medical department of a highly reputable *congregate* prison may be, and actually is conducted; and we venture to say that no one who ponders it carefully, will hereafter feel any surprise at the infrequency of *reported* cases of disease and insanity, under such an administration. For we have only to suppose all the facts disclosed by the foregoing testimony of the physician, and of all the other witnesses, to have occurred just as they did, up to five o'clock P. M. of June 15, and that then, the paroxysm, instead of being suffered to reach a mortal extremity and to expend its terrific force upon the warden, had been cooled off gradually under a barrel or two of water, or had exhausted itself in frightful fancies or fruitless shrieks of distress through a night "in solitary"—and probably the brief three months that remained of his sentence, might have past away with one or two hospital visits, and orders to "keep at work," and no mortal ear would have heard that there was any such case of insanity as this, nor even that there was such a man as Abner Rogers, jr., in the "great manual labor school" at Charlestown.

In contrast with this we will venture to assert, without the fear of intelligent contradiction from any source, that the very earliest, lowest and least of the symptoms of derangement, which, for several days before the homicide, *Rogers* is proved to have manifested, occurring in a convict at the Eastern State Penitentiary, would, of itself, have brought him to the special notice of the physician, as a patient requiring watchful oversight and daily care. His number would have been entered on the medical journal, and a course of treatment would have been prescribed without delay, to counteract all morbid tendencies.

And here we particularly ask the reader's attention to a striking difference in the sanitary arrangements of two prisons established on the opposite plans of discipline, which we are investigating; and we may as well take the Eastern State Penitentiary, and the State Prison at Charlestown, for the purpose, as any others, though so far as we know, it is a difference which prevails substantially throughout the two classes of prisons, and and may be considered as a necessary result of an inherent principle in each.

We have seen that in the Eastern State Penitentiary, every convict who desires it, may have an opportunity to consult the physician and make known any symptoms of disease that may be upon him. In the State Prison at Charlestown, the keeper of the shop stands sentry for the medical officer, and no man can approach for healing aid, but with the pass of his overseer. His whims, his prejudices, his ill-humors, his resentments, his ignorance, his indifference, his mere caprice, all array themselves against the sufferer. There is no access to the hospital till the keeper is propitious. And all this formality and parade, is deliberately interposed between the convict and the physician, *for the very purpose and end of keeping such a case as that of Rogers, from coming under the physician's notice.* The controlling officers of the institution, decided that his was a case of simulated insanity, and the book-keeping system was established to correct evil from this source, by vesting in the overseer of the shop, the right of deciding, in the first instance, whether the convict needs medical advice!

On the 10th of June, a case forces itself upon the attention of this functionary as demanding hospital treatment, or at all events medical examination; and with the observance of all the prescribed formalities, the patient presents himself to the Doctor. He has past the first stage of the inquiry, or he could not be there at all. His keeper is convinced that he needs help, or he would not be sent. Can he do less than feel his pulse? Did he not look at his tongue? He cannot say that he did either! He is sure he prescribed nothing. Three days afterwards, it so happened that the physician saw the same man in the hands

of the deputy, under circumstances that induced him to ask the warden what was the matter with him? The warden replied with a significant smile—"He's only a little *refractory*!" The deputy soon came forward, and in presence of the physician, asked how much water he should put on him? "Not much," replied the warden—"part of a barrel." This was an incident, one would think, that could not but awaken interest in the mind of a mere casual spectator. That it should no more impress the mind of the medical officer of the prison, to whose official examination the sufferer had so recently been submitted, by his overseer, is passing strange.

By Thursday, the 15th, the case had assumed a more decided and alarming aspect, and the attention of the physician was again called to it by the overseer's pass-book. The man was highly excited. No one could deny this who saw him. He had passed a sleepless night—he was evidently in an unnatural state—voluntary or involuntary—and he claimed the physician's attention—but all in vain. He came forward, but the medical officer *did not feel his pulse nor look at his tongue!* Such cases were not new to him. They occur often in that prison. There was Orman Johnson for example—he made the same pretences, and for him, he prescribed *chains, and working at the grindstone*. So here the patient is returned to the shop with underscored orders to "keep him at work." There was "one Washington, too, who shammed it, as the warden thought." It was not known at the prison whether he was really insane or not, but it is understood that it was found to be very far from a sham after he left!

In the Eastern State Penitentiary it would not only have been the duty of the physician to receive and examine such a patient, and if need be prescribe for him, and make a minute record of such examination and prescription, when applied to for advice. But twice, in the interval between the 10th and 15th of June, the physician would have called at his cell and have given him ample opportunity to consult him. Three times, too, during each day of that interval, he would have enjoyed the opportunity of saying what he pleased to the keeper

of the ward, without any third person to interrupt or embarrass their interview. And at any hour of the day or night, (in the intervals of the physician's semi-weekly round,) would it have been the keeper's duty, (and a duty which it would have cost him his place to neglect,) to have gone to the physician and made known to him any tokens of serious illness which a convict might manifest.\*

These and their results would be noted with minute fidelity, and thus contribute their item to the aggregate of mental and

\* The following passage from the Seventeenth annual report of the Eastern State Penitentiary commends itself to the judgment and humane reflection of every reader. It stands in marked contrast to the course of proceeding in the Charlestown prison, which we have just sketched.

"The general health of the prisoners has been good, and beneficial effects resulting from the services of a physician, resident in the prison, have answered all the sanguine expectations of the friends of that change in the medical department.

"When the law has awarded a deprivation of liberty for a certain period, but with wholesome diet, proper clothing and employment, as the adequate punishment for an offence, do not justice and humanity demand, that this sentence should not be exceeded, nor the prisoner's life be endangered; that his sufferings in sickness shall be alleviated, and labor not be enforced when indisposition renders it improper; when punishments are inflicted, that the constitution should not be unnecessarily injured; that if his life should terminate in a prison cell, he should have the attentions of a humane and skilful physician to alleviate, if possible, the pangs of that awful period? If this be granted, as it will be by every one of humane or Christian feeling, in no way can it be effected in large prisons, but by having the whole time of a physician devoted thereto. Periodical visits of one or several days interval cannot avail; symptoms, making one practice proper one day, may change, and be injurious the next:—where inducements exist, as is the case in prisons, to practice deception, the general character of the convict must be studied to enable the physician to act with success. The warden, with the best judgment and intentions, is constantly erring in distinguishing between simulated and real disease and suffering. A case, related to me by an officer of a prison in an adjacent State, is to the point, and I may be excused in noting it. A prisoner, a stranger, not speaking our language, was received. He did not perform his task. The officer, ignorant of any incapacity, had him flogged. This was repeated several times, without success. The warden was consulted, who, after examining the case, (believing the man was obstinate,) ordered a severe flogging. The next morning the prisoner was found dead in his bed. A post-mortem examination discovered extensive chronic disease. I am satisfied, from my experience, that much unnecessary suffering, and oftentimes death, arise from want of a medical adviser resident in prison." pp. 22-3.

physical disease in the year's account. In the Massachusetts State Prison at Charlestown, on the other hand, such an obvious case as that of *Abner Rogers, jun.*, is bandied about (as we have seen) for days in succession, as a matter of curious speculation, among contractors and foremen and turnkeys and convicts. Sometimes the warden, sometimes his deputy, and sometimes both are parties to the dialogue, and between them all, the unhappy monomaniac is hurried from the douche to the "solitary," from the "solitary" to the workshop, from the workshop to the hospital, from the hospital to the workshop, and from the workshop to the douche again, without a word or look of sympathy—writhing all the time under the morbid apprehension of a conspiracy against his life, which every act and look directed towards him, seem only to deepen and aggravate.

Let the reader look at the simple facts as the report of the trial discloses them. The chief officers of the prison to whom the disposal of the convict's person and the care of his health, are entrusted—the warden as well as the physician—(perhaps we might better say the physician *because* the warden) have settled it in their own minds, that it is all a game to avoid work—a perverse and lazy fellow trying to dupe them into a belief that he is crazy. They are not to be thus imposed upon, and hence one orders him to his work, and the other, in his turn, to the *douche*, or the "solitary." The officer who has the care of the man expresses to the warden his confident belief in his insanity, but the summary reply is—"He is no more insane than I am." Others intercede in his behalf, and ask for a stay of all harsh proceedings. They are rebuked for their interference, and told that "it wouldn't do to talk in that way—if they did they would have every man insane in the yard." Was this a random speech? Have we not reason to suppose that it was sober truth unguardedly uttered, and possibly somewhat exaggerated? We confidently submit to the reader, that apart from the *denouement* in Roger's case, there is nothing in his whole history which makes it in the least degree improbable that twenty or fifty convicts were then at daily labor within the walls of that prison, as perfect monoma-



niacs as Rogers himself, and needing only a certain concurrence of circumstances to prompt to some overt act like his. Another warning voice is addressed to the warden. The symptoms of raving mania develop themselves still more unequivocally, and at length the request is distinctly made by one of the officers of the shop that he should be removed, and the deputy warden actually proposes to take him away and shut him up. He suggested this course to the warden, but it did not receive his concurrence. "HE WILL DO WELL ENOUGH AS HE IS. BETTER LET HIM BE!"

Need we ask what would have been done with such a case in the Eastern State Penitentiary? No one at all familiar with the uniform course of proceeding there, needs to be told that every stage in the progress of the disorder would have been noted with precision. The minutest shades in its character, (even such as to common view would pass for harmless eccentricity or fitful ill-humor,) would have been sketched with a fidelity exhibited rarely except in the best attended of modern hospitals for the insane. Nor would it be a work of supererogation on the part of any penal institution to do this.\* Its overseers are bound to concern themselves that beyond the infliction of the sentence of the law, no ulterior or collateral effects shall be felt by the sufferer, which are not naturally and necessarily incident to the mode of punishment. Such was the obligation of the governors of the Charlestown Penitentiary. True it is, that their method of employing their men limits, if it does not preclude the opportunity of needful observation and inquiry. So long as the convict is sane enough to keep the lock-step—so long as he shows no disposition to bolt from the gang—performs his appointed task, and in no way becomes conspicuous as an object of pity or punishment, who is there to know his state? His keeper he must approach at his peril except on business, and then with solemn awe. His daily labor is done, his meals eaten, and a form of worship attended, without a word, a sign, or a wink.† "If he sleeps well, and

\* Report of State Prison at Sing Sing, March 14, 1834—Senate document of New York, p. 18.

† Ibid.

works well—HE IS WELL,”—says the theory of every congregate prison. If, in the dead of night, groans of anguish, or shrieks of horror, assail the watchman’s ear and waken the whole ward—“It is only *Johnson*, or *Erving*, or *Watts*, or *Washington*, or *Rogers*—*Better let him be.*” The next morning the disturber of the prison’s peace is taken to the *douche*, and at night to the deeper darkness and loneliness of the “solitary,” as a *punishment for being noisy!* If he is not soothed and calmed by this process, he may perhaps be subdued, and may even go willingly to his work, but the next development of his disorder involves the sacrifice of a valuable life; and then it will be well for those concerned if they can show that it was not a clear, well defined case of insanity, which in any separate prison would have been long before ascertained, and put under appropriate treatment as such.

If we would see the contrast now before us and its legitimate results in a still more striking light, let us introduce into the State Prison at Charlestown a commission of medical gentlemen, who, by a long course of study, wide observation and much experience, have acquired skill in the detection and treatment of insanity. We will select Dr. BELL, of the McLean Asylum for the insane at Somerville, and Dr. WOODWARD, late of the State Hospital for the insane, at Worcester, Massachusetts; and Dr. RAY, then of the State insane hospital at Augusta, Maine. It shall be on the morning of the 15th of June, and they shall have an opportunity of knowing all that was disclosed on the trial concerning the mental and bodily state of *Abner Rogers, jun.*, up to 12 o’clock, M., that day; and now let us hear their opinion in substance as it fell from their own lips.

Dr. BELL has had upwards of a thousand insane patients under his care, and has directed his attention for years to the study of the subject of the insane, and he says:—

“I am satisfied that Rogers was laboring under that species of insanity, which is accompanied with the belief of hearing false voices or hallucinations.\* This form of insanity is not

\* Trial, p. 153.

generally recognized as insanity, by the world at large; and therefore, would not be likely to be simulated. Yet it is well known and understood, and not unfrequently met with, by those who have the care of the insane. The delineation of it by this man, was consistent—exactly true to nature, and not mingled with any symptoms which do not properly belong to this type of the disease.\* I have never known this form of insanity simulated. I should think, as a general thing, that hallucinations by way of hearing voices, much more commonly occur to the insane by night, than by day. A belief in the existence of conspiracies, is a frequent symptom in this form of disease. A course of conduct which is soothing and tends to calm the feelings, would be likely to allay the excitement; the opposite treatment would be likely to aggravate it. Insane persons generally submit to discipline, and are operated upon by motives of hope and fear. I consider the case of Rogers, as one of positive and decided disease.”†

Dr. WOODWARD has had under his care, upwards of two thousand insane patients—considers Rogers' case as one of *monomania*, arising from hallucinations—a form of insanity very difficult of simulation, and but little known in the community—has had considerable experience in simulated insanity, but never heard or knew of this form of insanity being simulated. “My experience,” he says, “would lead me to the opinion, that all the man's thoughts are engrossed by the one idea of punishment, and his accumulated excitement, is very likely to expend itself in some outbreak of violence, as this is the safety-valve by which the pressure of the excitement is relieved.”‡

Dr. RAY has been superintendent and physician of the Maine Insane Hospital, for years, and has written a work on the medical jurisprudence of insanity—has not heard a single fact testified to on the trial, in regard to Rogers, during the week succeeding June 10, inconsistent with his insanity. “I should call it a case of acute mania, having hallucination for its pre-

\* Trial, p. 154.

† Ibid, p. 160.

‡ Ibid, p. 162.

dominant feature. I think I never saw or heard, or read of a case of simulation of it. It would be extremely difficult to counterfeit it so as not to be detected. Cases of hallucination, by way of hearing false voices, occur more or less in every insane hospital. The delusions of the insane are frequently concealed and lie hid in the mind for some time, before they manifest themselves. Hereditary insanity is a predisposing cause to it, to the extent of about half the cases that occur—as it is estimated. The symptoms of the pulse, are indications among other things, of the existence of mental disease.”\*

“We are unanimously of the opinion,” say all these professional gentlemen, “that Abner Rogers, jr., is and has been, for some days, an insane man.”

What shall we say to this report of the commissioners? Do they misrepresent the case? Do they mistake the current of the unhappy man’s acts and humors, for four or five days previous to the memorable 15th of June, on which they base their judgment? If not, how can we escape the conclusion, that the physician and warden had made up their minds without a tittle or shadow of justifying evidence, that it was a *sham*! And what is still more inexplicable, after the confirmation of all this testimony had been seen in the events of the four or five hours next preceding the fatal paroxysm, so as to lead to a request that the wretched man might be removed from the shop; and even after it had been sealed by the life-blood of the warden, the physician still insists upon it, that Rogers was of sound mind, and that he came to the hospital on Thursday morning, with a lie in his right hand!

It will be remembered that the physician represents himself as no stranger to the characteristics of simulated insanity. So far from it, “his attention had been drawn particularly to that subject, and he had even thought of making a detailed report of his experience in relation to it.” The warden, too, had unusual sagacity in detecting attempts of this kind. The physician says, “he always considered the warden’s judgment a superior one, in

\* Trial, p. 165.

distinguishing between real and simulated insanity. He always examined a case with a good deal of care, and was never known to err after examination." Did either of them examine the case of Rogers? When? Where? In whose presence? By what tests? Where is the record of the examination? Or was the case too obviously simulated, to call for any examination? Alas! we have already shown conclusively, that it was so obviously real, that it should not escape the most ordinary professional observation.

But were there no methods or tests by which the misconceptions of the officers could be corrected and a just judgment of the case formed? What do approved medical writers tell us? Why, that it is the duty and privilege of the physician, to spend days in the examination and observation of a patient, and where it is practicable to secure a complete history of the antecedent circumstances of his birth, life, and hereditary tendencies. He will (they tell us) as a matter of course, ascertain his habits and constitutional peculiarities; and as mania is so commonly associated with cerebral disease, various pathological symptoms would occur, which no device of imposture can ever imitate.\* To say nothing of the wildness of the eye, there is not unfrequently febrile action, which it requires no very labored examination to discover. The pulse and the tongue may reveal these. Sleeplessness is another test.† Nature in her healthy functions, will resist any formal simulation of this sort, and no very long or close watching will be needful to detect simulation in such a form. The authority of the most distinguished writers on this subject is singularly uniform and unqualified, in support of the position, *that no attempt to simulate insanity can long impose upon one who is properly qualified to judge of the symptoms.* But in the Charlestown prison all these

\* In the case of a criminal condemned to be executed, who was suspected of feigning madness, the opinion of the late Dr. Rush, was requested, and when that critical observer of disease found the pulse twenty beats more frequent than in the natural state, he decided (chiefly on the strength of this fact) that the prisoner was really mad, and such he finally proved to be beyond a doubt.—Ray's Medical Jurisprudence, p. 341.

† Ibid., p. 342.

and many other and even more decided indications of disease, may exist, it seems, without exciting even a momentary anxiety in the bosom of the medical officer. Dr. Ray says, that the physical symptoms in the case of Rogers, showed that "something was the matter with the man. The state of his pulse, his coated tongue, &c., plainly showed that he was diseased in some way." "I presume," he adds, "that insanity is always connected with a bodily disease, and the *physical symptoms are always to be noticed in treating it.*" But the physician of the Charlestown penitentiary, either from a presumptuous confidence in the warden, who, comparatively speaking, could have no means of judging, or from an infatuated reliance on his own intuitive sagacity, neither feels the pulse nor looks at the tongue of his prisoner! It is all a sham—Keep him at work!—Chain him!—Put him to the grindstone!

"There was one *Clarke* who feigned insanity three years;" and when Mr. Dwight went to see him, he used to say—"Now *Clarke*, look me in the eye"—and if he could look Mr. Dwight in the eye, and go on talking just as he did before, then Mr. Dwight always suspected that he was feigning insanity! There was *Orman Johnson*, too, and *Watts*, and *Washington*, and *Roe*, and *Peters*, (who was kept shut up,) and—but for the sad catastrophe of June 15th, it would have been added—*Rogers* too, that arch simulator—all of them tried to dupe us and were foiled!

And is this a penal institution to hold up before the people of the United States and Europe, as a model for imitation!—a legitimate development of "the system of John Howard?"\* Can we be persuaded to think of it as a "great manual labor school,"† in which the pupil-convicts have, "at one and the same time, every day, eight hours of diligent and useful toil, eight hours of manly exercise, eight hours of social existence, and time enough left for penitence and instruction!"‡ It may be a beautiful picture of prison life, but we think we have made it quite clear that the interior of the institution at Charlestown, furnishes not a line nor shade to answer to it.

\* Gray on Prison Discipline, p. 59.

† Ibid., p. 47.

‡ Ibid., p. 183.

Rogers was tried at the Suffolk Assizes and Mr. Gray is a member of the Suffolk bar. Did he never hear of the case of Abner Rogers, jr., nor read a report of it? Could he be aware of the state of things which that trial disclosed as then existing at the Charlestown prison, and yet give currency to an *innuendo*, (of the force and impression of which he is not ignorant,) that there are convicts in the Eastern State Penitentiary sick in body and mind, of whom the world knows not, unless they die or become hopelessly insane? Can it be, that with so hideous a picture before his eyes, (of which that trial presents but the mere outline,) he could give utterance to an aspersion so reproachful and so entirely gratuitous? Does it require any extraordinary discernment to see, that were the same rules of judging of cases of insanity applied to convicts in the Eastern State Penitentiary, which are incontrovertibly proved to have been applied for years in the Charlestown prison, not a single case of mental disorder, arising in the prison, would have appeared in the reports of that institution? If Rogers was not insane on the morning of the 15th of June, then no man has ever been insane in the Eastern State Penitentiary. If he was insane, nothing in the records, nor in the practice of the medical officer, nor in the views and usages of the warden, nor in the economy and regulations of the prison, leads us to doubt that there were at the same time a score or two of others in the same condition, whose malady may have issued in other forms of positive and obvious disease, though they may not have been forced, as his was, upon public attention and inquiry. And if such neglects and abuses can find tolerance in an institution which Mr. Gray selects as a model of the class of congregate prisons, what may we not expect to find in those of the same class that occupy a far inferior place in the scale?

Perhaps the reader may think, by this time, that we had some reason to crave indulgence beforehand, for the large use we make of a single case, occurring in a single prison; and some may hastily judge, that if one such case is to condemn a system, it will be difficult for any to escape. We have given no warrant for such a conclusion, nor will it be drawn by any one who

apprehends the subject of the present inquiry, viz., the alleged tendency of the separation of convicts, one from the other, to produce disease and derangement. The opponents of separation attempt to prove such a tendency, by comparing the reports of prisons administered on this principle with the reports of prisons administered on the congregate principle. If the reports were based upon the same or similar data, or in the words we have previously used, if a common standard of judgment were established, and applied in the same way to the same class of convicts, with results so widely different, it would be difficult to gainsay the argument or resist its force. It therefore becomes essential to know what rules of judging are adopted in the two classes of penitentiaries; what tests of disease, bodily and mental, are employed in them, and what measure of confidence and credit may be reposed in their reports. If we go to the officers with our interrogatories, and with the avowed object of discrediting their statements, we can hardly expect to be welcomed on such an errand. The affairs of a penal institution, and especially its internal economy, are quite secluded from public view; and though the inspectors may be ignorant of any gross and palpable abuses, they cannot be expected to give minute attention to the details of official duty, nor to detect latent deficiencies in the working of the system. How then shall they be brought to view? Clearly in no more complete and satisfactory manner than by a judicial investigation, for a collateral purpose, yet involving the very points of discipline and practice which we want to examine. Such an investigation for any purpose rarely occurs, and it is without precedent (we believe) for one to bear so distinctly and almost exclusively upon the sanitary state and medical practice of the institution, as the one we have cited. It is like the issuing of a new, full and faithful report of the condition of the State Prison at Charlestown, in lieu of the last ten imperfect and partial reports.

It is not, therefore, the single, isolated case of Abner Rogers, jr. of which we make so much, but it is the development of the whole theory and practice of the medical department of a



congregate prison, (and so far as we have any means of judging of ALL congregate prisons,) which his trial brought to view, that gives it such prominence. In the absence of such a development, Mr. Gray's argument, founded on the comparative effects of the two modes of discipline at the Eastern State Penitentiary and at the State Prison in Charlestown, as exhibited by the reports, is quite plausible if not forcible. But in view of such a development it has neither force nor plausibility, because it is seen to rest on entirely false assumptions. If our readers, therefore, look to the **GENERAL BEARING OF THE BODY OF EVIDENCE** in this case of Rogers upon the subject of our inquiry, rather than to the case itself, they will perceive that we have not given it undue importance nor disproportionate space. Officers of other prisons, congregate and separate, have been killed by convicts, sane and insane; and the occurrence of such events is not to be cited to their prejudice, nor are they necessarily of any importance in determining the comparative merits of the discipline under which they occur. It is only when their occurrence leads to the development of principles and practices predominant in, or characteristic of the administration of the system, that they become of such essential importance in an inquiry like the present.

We feel constrained to notice, in this connection, an instance of disingenuousness in official representations on this subject, which it seems to us no one can approve.

In the Twenty-second annual report of the (Boston) Prison Discipline Society, (1847, p. 81,) a section is devoted to "the comparative merits of the Pennsylvania and Auburn systems, as illustrated by ten years experience in the new penitentiary, Philadelphia, and in the State Prison at Charlestown, Massachusetts, in regard to **INSANITY**, on the authority of official reports, published in legislative documents." With the tragical scenes enacted in the Charlestown prison in June 1843, fresh in our memory, and with the evidence which the trial of Rogers furnishes of the existence of several cases of insanity there, (some admitted to be real and others supposed to be

simulated,) we turned at once to that date in the schedule of "comparative merits;" and that our readers may see it as we saw it, we transcribe it, word for word.

"January 1, 1844. The physician of the new penitentiary in Philadelphia says, in his fifteenth report, (p. 37,) the total number of cases, (i. e. insanity,) old and new, is fourteen. In addition to which, we have had three old cases dismissed by expiration of sentence, making an aggregate of seventeen cases in the prison some time in the course of the year. Six of these fourteen cases were more or less affected before committed, and one was of very doubtful identity; so that, of old and new we have had to deal, since 1842, with seven genuine cases properly belonging, for aught known to the contrary, to the institution, only one of them, let it be remembered, having commenced in 1843."

Why does the author of the "comparative merits" select the paragraph he has quoted instead of that which is contiguous, and which exclusively concerns the period of time which his comparison professes to embrace? Simply because the rejected passage shows, that "out of four hundred and eighty-seven prisoners, only two cases of mental disorder had been developed in the cells during the year; that both were attributable to a cause which exerts its baneful influence out of prison as well as in it; that one, (a suspected imposture,) was released too soon to afford any definite results, and that the other was a slight case and readily cured." Such a statement, though official and indisputable, and lying at his fingers' ends is left, and a contiguous passage taken, which brings to view the very cases that had been already used for the like purpose in the comparison of previous years!

But what are we told of the state of the other institution during the same period:

"*In the State Prison at Charlestown*" (the italics are not ours) "the physician's report for the year ending September 30, 1843, contains no notice of any case of insanity developed during the year. The inspectors again call the attention of the government to the lunatics within the walls, and urge the

importance of their removal to an asylum; some of whom they say, they have reason to apprehend, were insane at the time of committing the offence, and have been ever since."

So it seems that the inspectors of the Charlestown prison called the attention of the government of *Massachusetts* to the circumstance, that there were lunatics within the walls that ought to be removed, &c. And did the author of the "*comparative merits*," &c. overlook the passage of the report of the inspectors of the Eastern State Penitentiary, *in that same year*, and within the same covers that enclosed the paragraph he has quoted from the physician's pen, in which they call the attention of the government of *Pennsylvania* to the existence of the like state of affairs in their institution?

"Of the whole number of prisoners under sentence during the year 1843," they say, "TWENTY-SEVEN were unable to acquire knowledge by reason of mental incapacity. Thus, during the last year, about five per cent of prisoners were unable to receive instruction in reading and writing, owing to mental disqualification, and this existing, it is believed, *at the time of conviction*. It is certainly unfair to take such instances as these," they truly add, "from which to decide against or condemn a system that was established for the punishment and reform of sane prisoners, and never intended as a hospital for mental diseases. The inspectors have no power, as in other States, to remove prisoners thus afflicted to the almshouse or hospital."\*

This extraordinary vacuum being thus supplied, we find the two penitentiaries are alike burthened with several prisoners of insane or imbecile mind, who are quite improper and hopeless subjects of any kind of penal discipline. The number of persons of this class is more definitely stated in the inspectors' report, and is probably very much larger in the Eastern State Penitentiary than in the State Prison at Charlestown.

When the physicians of the institution make their annual reports, one of them takes into view all the cases of disordered intellect existing or that have existed within the walls, old and

\* Fifteenth Report of E. S. P. 1843-4, p. 9-10.

new, maniacs, idiots and imbeociles, under treatment and past treatment, whether developed in the prison or before commitment, all are brought into full view. The other well knows that there are lunatics and madmen in the cells, one or more of them in rigorous confinement, but he does not consider them under his care, nor even within the sphere of professional observation!

"The physician's report for 1843, contains no notice of any case of insanity *developed during the year.*" The reader will not fail to mark the phraseology. Was not the case of Abner Rogers, jr. "developed" within that year? Was not that a "case of insanity?" If the physician should reply in the negative to the first question, it might be properly asked, when was it developed, if not in 1843? And where was it or should it have been reported, if not in that year? If he should deny that it was a case of insanity, and that his opinion had not then been overruled by judicial authority, it would still leave the author of the "comparative merits" responsible for giving color and currency, at a later period, to a statement which he knew could not be sustained, without violating the established principles of law and evidence.

"*The physician's report contains no notice,*" &c. This might be true, if fifty chronic cases had been lying over from year to year, and even if fifty new cases had been "developed" in in 1843. The affirmation is not, that no new cases were developed, but that *the physician's report contains no notice of any such case.* To the common reader the contrast between the medical reports from the two prisons for that year, would be strikingly unfavorable to the separate, and advantageous to the congregate prison. To one on his guard, the report of the Eastern State Penitentiary is full, frank, minute and simple, while the statement respecting the medical report of the State Prison at Charlestown has, to say the least, none of these qualities.

We will not venture to say how much of the prevailing popular opinion against the separate system of discipline, rests upon a foundation quite as infirm and treacherous as this!

What, then, is the conclusion of the whole matter for the elucidation of which we have cited the melancholy case of Abner Rogers, jr. ? We have shown, by indubitable testimony—

(1.) That the instances of insanity arising in the Eastern State Penitentiary are not more frequent than like cases in any other prison, having a similar class of convicts.

(2.) That whatever the amount of physical or mental disease may be, it is in no form or manner chargeable to the principle of convict-separation.

(3.) That all comparisons of any two penal institutions, in respect to the mental or physical condition of convicts, are futile and serve only to mislead the inquirer, unless a common standard of judgment be established, and applied to both—and

(4.) That so far as such comparisons are made between the Eastern State Penitentiary and the Charlestown prison, they are made between an institution in which the mental and physical condition of each individual convict is the subject of vigilant professional oversight, prompt relief and minute report; and one in which there is but little more than the *form* of professional oversight—where there is no responsibility at all for the sanitary condition of the prisoner, unless he lags in his task; and where disease of body and mind may go on from stage to stage, day after day, and scarcely excite an official sympathy or a thought, till it winds up in a deadly paroxysm and therefore becomes a subject of public judicial investigation.

A review of the ground over which we have travelled, in the preceding pages, suggests various inquiries, but the most important of them, in our apprehension, resolve themselves into the following, viz:—

Would the opponents of the separate system be willing to adopt it, were the objections on the score of vitality and insanity shown to be groundless? We presume not. They opposed it before this class of objections had been thought of. Labor could not be successfully introduced, it was said—communication could not be prevented—the expenses must be enormous and the earnings inconsiderable, while moral and religious instruction would be entirely impracticable. We are,

therefore, forced to the inference that it is to the principle itself (independent of any supposed results) that the opposition lies; and it is not improbable that the one has been and will continue to be preferred to the other—not by theorists or philanthropists, nor prison discipline societies, but by legislatures—chiefly according to the views that are entertained of the true end of prison punishment. Some regard the reformation of the convict as comparatively a remote contingency. If it enters into their view at all, it is as a subordinate object. Others give it their chief consideration. Hence it is that under one system the most lucrative employment of time and labor, both in kind and measure, is sought, and the sacrifice of either for the sake of moral instruction, or for the introduction of better reforming influences, is not favored—while under another, the pursuits of convicts and the division and occupation of their time, &c., are determined, in no inconsiderable degree, by their bearing on the great purpose of reformation.

It is in this view mainly that we attach so much importance to the rigid seclusion of the convict. We think it so essential to his present improvement and future safety that we sacrifice to it some advantages, perhaps, which we might otherwise value; and incur (it may be) some risks which we would willingly avoid, were we indifferent to these considerations. It is the settled conviction that this absolute seclusion from vicious company is all but indispensable to the unhappy prisoner's improvement, that constrains us, for the sake of securing it, to build a cell exclusively for him. We make it large, light, and airy enough for suitable labor and healthful residence. We give him separate moral, religious and literary instruction—separate medical care and separate attention from officers and appointed visitors of the institution. That to some grades of intellect and to some moral temperaments this seclusion may be irksome and even severe, we admit; and that it is always healthful to body and mind, we do not allege. But we do know, that to the mass of convicts, and to the better and more hopeful class without exception, the seclusion is preferred, with all its hardships and privations, for the same

reason that one who really desires to be cured of a disease, prefers an active nauseous dose to a more agreeable but ineffective one.

We maintain, then, that in respect to this RADICAL PRINCIPLE, THE TWO SYSTEMS, AS SUCH, ARE NOT SUSCEPTIBLE OF COMPARISON. The regimen which a physician adopts to restore a diseased limb to soundness, by strengthening the general system may be very wise and appropriate, and so may be the surgeon's apparatus for cutting it off, but there is obviously no point of comparison between them.

For the reason above assigned, also, the returns of INSANITY will be likely to vary essentially, according to the ends which are expected to be answered by the various prisons. If, for example, reformation is the cardinal object, the moral and intellectual state of the convict is the point of principal interest. The motives and considerations, and states of mind which are relied on to bring about this great change, require intelligence and capacity. Idiots and lunatics are not within the range of reforming influences of this class, and if the mind is suffering alienation or decay, such a process of reformation will be quite likely to disclose the fact, as no other process will or can. But when the design of the prison is merely or mainly to punish the felon—to restrain him from further outrages—to make him pay his way—opportunities to observe his moral and intellectual state will not be sought, nor willingly seen. It will be easy to believe the clearest cases to be simulated, if the admission that they are real, will send half the men in the prison out of the workshops into the hospital, and instead of making the case a study, and watching narrowly that no symptom of incipient insanity shall escape detection, the prescription will be—“*chain him!*” “*Put him to the grindstone!*” “*Keep him at work!*” Under such an administration, the reported cases of insanity will be few and far between.

The separate system seeks, as its leading object, to recover the delinquent from his evil courses, first, by making him feel that the way of transgressors is hard, and then by encouraging his efforts and hopes to restore himself to a respectable social

standing. The congregate system, on the other hand, regards the immediate punitive effect of the imprisonment, and the indemnity of the public against pecuniary loss as of the first moment. If any case of reformation occurs, it is an exception. With such totally diverse ends, as we said at the outset of this discussion, the processes must, of course, be essentially different.

We are not unaware that the opposers of the separate system deny it any advantage, in respect even to the reformation of offenders. Some of them alleging that there are quite as many re-commitments to separate as to congregate prisons. One of the sustainers of Mr. Gray's general positions is not prepared to go quite to this length. At all events, he thinks this part of the case is not yet made out against us.\* We are so fully satisfied that the precedence, even on this score, is entirely with us, that we should not hesitate to rest the separate system's claim to unrivalled confidence on this single point, if we had not other and more easily demonstrated advantages. To make a satisfactory exposition of the relative results of any mode of imprisonment in this respect, however, must be a work of time, patient research, and untold labor. Our present imperfect statistics do not furnish even the elements of such a comparison.

Our opponents are also slow to attach any appreciable value to the greater seclusion from public observation, and to the ignorance of each other's persons, in which convicts depart from a separate prison,† who are disposed to lead an honest and sober life; but facts fully warrant the opinion that it is of inestimable importance. We recite two cases, not before made

\* Christian Examiner, March 1848, p. 276.

† One disadvantage of social, as compared with solitary (?) labor, much insisted on, is this: that the convicts employed in the latter will be more able to recognize each other after their discharge, and to tempt each other to new crimes. This is true, especially with regard to those employed in the same workshop, and it is a disadvantage, but it has been extravagantly overrated by those who have placed too much confidence in the statements of the culprits themselves. "We want some further and better evidence to show the actual extent of this evil in practice," &c. (Mr. Gray's pamphlet, p. 130-31.)



public, but well attested, appropriate to our purpose, and to be received, not as isolated instances, but as illustrations or specimens of large classes.

*First Case.*—A man whom we shall call Johnson, was committed to a congregate prison for larceny. He learned the business of shoe-making—behaved himself well—was discharged, by the expiration of his sentence, and settled in a country town, at a distance from his former home. His business prospered—he married and had a family. Several years had elapsed, when a man, whom we shall call Jackson, came into his shop—found him at work alone, and claimed to be a prison-acquaintance. Johnson remembered his features slightly, but begged him not to divulge the fact that he was ever a convict, as it would ruin his business and standing. Jackson saw his advantage, and seized it. He promised to keep the secret to himself for a sum of money, which was promptly paid. In a short time the villain returned, and levied black-mail again upon his doomed victim. By-and-bye he insisted on his accompanying him to a race-course, within the borders of a neighboring State, upon pain of exposure, if he refused. Goaded almost to desperation, he went. A horse was stolen by Jackson; Johnson, though innocent, being found in his company, was arrested, and, in the absence of exculpatory evidence, was summarily tried by a magistrate, and committed to the penitentiary. While there, an insurrection occurred among the prisoners; Johnson was convicted as *particeps criminis* and hung!

*Second Case.*—A convict was received into a separate prison, who had been sentenced for forgery. An officer of the prison instructed him in a useful science of the principles of which he obtained a good practical knowledge. Upon his discharge, he settled in a Western State and commenced business on a small scale. By dint of industry, enterprise and integrity, he acquired confidence and custom in his business, and in a few years became a man of property and influence. The warden of the penitentiary having occasion to travel through that section of the country, met a brother of the convict, whose fears were in-

stantly excited, lest some disclosure of the circumstance should be made. The assurance that no apprehension need be felt on that score, quieted the brother's fears, and the warden afterwards had abundant evidence that his former prisoner possessed a large estate, and was doing a very extensive business, having valuable commercial arrangements in almost, if not quite, every Western State. What was it worth to such a man, under such circumstances, to feel confident that none knew of that dark passage in his history, who could possibly be interested in revealing it to others? He could afford to pay the aggregate profits of a dozen congregate prisons for a series of years, rather than risk the recognition which is quite inevitable under the associate discipline.

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## SECTION XI.

### STATE AND PROSPECTS OF THE SEPARATE SYSTEM.

If we have succeeded in the object of the present inquiry, we have shown that the anti-separatists must take the position, that without association of some sort, a prisoner is exposed to the loss of his health, reason and life, and that no other association is practicable, in penitentiaries, except that of the convicts with each other under a rigid system of non-intercourse. The position of the separatists is, that whatever other association may be needful and allowable, that of convicts with each other (even so much as by sight) is, under all circumstances, inadmissible. The former are as much opposed, we presume, to the unrestricted, indiscriminate association which prevailed in all our prisons thirty years ago as the latter, but they contend that there may be a modified association, one with the other, both practicable and safe, by which the healthful excitement of society is secured without the danger of corrupt communication. They can labor in the same apartment, it is said. They can see each other's faces and forms, and participate

in the noise and bustle of a work-shop; and even though all communication is interdicted, and that too under the most revolting and degrading penalties, they are still supposed to find, in the mere bodily presence of other convicts, some alleviation of what would otherwise be intolerable seclusion. They do not deny *in totidem verbis*, that the society of honest and good men who may be inclined to visit them in their cells, would be an equally effectual relief of their solitude, but they affect to regard any such provision as too uncertain and limited to be of practical advantage, and so fall back upon such association as the convicts can enjoy by the sight of each other's persons and the signs of life and activity which are present to their senses.

The separatists cheerfully acknowledge that such association as a congregate prison allows is far more safe and endurable in every view, than unintermitted, absolute solitude, from year to year; or than the herding together of all classes, which was so lately tolerated; but they maintain that the entire, individual separation of the convict from his fellows is so much better, as to justify its adoption, even though association were much less injurious than it is allowed to be, and though separation were much less beneficial than it is claimed to be. For they hold that many of the advantages which are common to both systems, are more perfectly secured under the separate than they can possibly be under the associate system. A library is certainly more available in a prison where the convict may have his book on the shelf in his room at all hours, and employ the fragments of day-time as well as his evenings in reading it, than when it is attainable only at set hours. Adult instruction in letters is more effective and appropriate when it is adapted to the capacity and habits of each individual learner. Moral and religious teaching depends for its value and permanency much more upon the docility of the individual mind and the secret interior process of reflection and meditation, than upon the excitement and sympathy of numbers. Access to the prisoners by friendly visitors who seek to reclaim and save them, is much easier

and less embarrassing to both parties, where each prisoner occupies his own cell and can be found there at any hour of the day. Peculiar traits of character; veins of perverse or unhappy temper; extraordinary defects of education; susceptibilities of good or evil impressions; and all the varieties of human want and woe are much more readily detected, and much more appropriately provided for, where each case is presented and can be treated by itself. The employment of these various means of influence and instruction in any of our prisons, is comparatively of recent date; and we may reasonably anticipate an indefinite enlargement and improvement of them, from year to year, in separate prisons; but we think that no injustice is done to the congregate system, when we say of it, that it has already exhibited its best fruits. Its radical principle cannot be more perfectly developed, except as it may reach a more perfect degree of non-intercourse. The separate system, on the contrary, is in progress. Plentiful and valuable as its fruits have been, they are but pledges of better and more abundant in store. A congregate prison can never hope to counteract many of the evils which even its warmest advocates acknowledge to be incident to association in any form. Its defects lie in what it *HAS*, not in what it *WANTS*, and there is no middle ground between separation and association. A separate prison, on the contrary, may reasonably expect to counteract the supposed evils of its discipline; for in the most unfavorable view that its opponents take of it, its defects lie in what it *WANTS*, and not in what it *HAS*. And it will be seen, by the careful reader of the preceding pages, that without any change in the principle, structure or economy of such a prison, and with but a very inconsiderable addition to the expense, these defects, whatever they are, could be supplied. If, for example, out of three hundred convicts, four or five may be suffering for want of more than fifteen minutes enjoyment of "human intercourse" every day, it is quite practicable to enlarge the indulgence to an hour or two, even if it were needful to employ an additional attendant for this purpose. And we shall be slow to believe that intelligent and sober-minded men would abandon a mode of discipline,

fraught with so many advantages to forty-nine or fifty of a prison population, because one in fifty may need some special care and attention to save him harmless from any real or fancied danger.

We have purposely abstained in this discussion from entering at all into the philosophy of the two theories. We know too little at present of the laws to which our intellectual nature is made subject, especially when acting upon the unenlightened, degraded, corrupted, perverted, chagrined, weakened minds of a community of felons, to judge of them in this light. We must be content to search for facts, and by analyzing and comparing these, we may hope in due time to establish a general principle. It is in this view that we so earnestly deprecate the course which some anti-separatists have seen fit to adopt. Without previously determining upon a common rule or standard of judgment, they force into comparison results which are produced by dissimilar causes and ascertained by dissimilar processes, whereby the unwary are deceived and misled. However paradoxical it may appear, the simple and undeniable truth is, that the separate system allows association, and the congregate system forbids it; and were the two theories fairly carried out to their legitimate and necessary results, a prisoner under the discipline of separation would enjoy more society, and enjoy it to a much higher degree, than his fellow-sufferer in a congregate prison. This is so obvious to those who have taken the trouble to investigate the theories, or the prisons in which they respectively obtain, that they would scarcely pardon an attempt to prove it; and it is to be regretted, that any should have felt themselves called upon to advocate or oppose either system without such an investigation. It is, of course, assumed that the construction of the prison-building is as faultless and the administration of the discipline, moral and physical, as entirely in accordance with its theory as it is practicable to make them; and, moreover, that the provisions of the law, as they respect the extent and severity of sentences, the uniformity of proceedings before the various tribunals, the exercise of the pardoning power, and

the vigilance and integrity of the police, are well-adjusted and faithfully executed and sustained; for want of these pre-requisites multiplied evils may spring up under either mode of discipline, from neglects and abuses which it is alike ungenerous and unsafe to attribute to an inherent error of principle, whether of association or separation.

Should it seem to any that the scope of the preceding essay is too limited, and that the friends of separate discipline owe it to themselves and their cause to set forth more at large its advantages and results, we have only to repeat what we said in the beginning, that our simple object, at the present moment, is to guard inquirers and observers *against impressions and conclusions from inadmissible comparisons*, by means of which many writers on this subject have been misled, and have (undesignedly we trust,) done much to mislead others. This is the predominant error of Mr. Gray's book. If we subtract from it so much as relates to the *comparative mortality and insanity* of the two classes of prisons, and the reasonings and inferences which such a comparison is supposed to justify, there would be but a meagre remnant left. If we have shown, therefore, (as we think we have,) that for want of a common ultimate standard by which to test results, any attempt to compare the systems in these two respects will only lead us into error, and hence is worse than useless—Mr. Gray's effort will not essentially change the posture of the controversy.

It may not be irrelevant to our chief aim, however, to give the reader some recent items of evidence of the deep hold that the separate principle has taken upon the public mind, both in this country and abroad, and the first place may be properly assigned to the proceedings of the Congress held at Frankfort-on-the-Maine, September 26-30, 1846. It embraced seventy-five members, viz. Germans, forty-six; Englishmen, six; Frenchmen, six; Swedes and Norwegians, six; Dutchmen, six; Swiss, two; and one each from Belgium, Denmark, Poland, and the United States. Of professions there were from Germany alone eight Judges, or Presidents of tribunals; seven Professors of law at the universities; six Governors or Super-

intendents of prisons; five prison Chaplains; six Physicians; five Advocates; four members of legislative bodies; and from other countries there were several chiefs of the administration and inspectors-general of prisons; Presidents and Secretaries of prison societies; prison Architects, and Editors of prison journals.

The great principles of the prevailing Penitentiary systems were thoroughly discussed for three successive days, and the results of wide observation and mature experience over the civilized world, were well considered and carefully compared, and at the close of their sessions a series of resolutions was passed, fully recognizing the SEPARATION OF ALL PRISONERS, accused and convicted, on short sentences or long sentences, as an essential FEATURE OF THE DISCIPLINE. And this decision was fully approved and confirmed by the second Congress which was held at Brussels, in the following year. That Congress was constituted of the representatives of SIXTEEN different nations, and in the progress of its deliberations it was made evident that the separate penitentiary at Pentonville and the separate county prison at Reading, (England,) were regarded, not only as affording models of construction which must be imitated throughout the world, but as patterns in discipline which must be universally copied.\*

Prisons administered upon the principle of strict individual separation have been approved by the governments of, and are now to be found in, the following countries:

BELGIUM, PRUSSIA, (four prisons,) HUNGARY, (ten penitentiaries,) DENMARK, SWEDEN, (seven prisons,) NORWAY, SCOTLAND, (seven occupied in January, 1846,) FRANCE, (thirty in progress two years since, and twenty-three then completed,) GERMANY, SWITZERLAND, POLAND, (three already occupied,) IRELAND, (model prison at Belfast,) ENGLAND, (new prisons on separate principle to the extent of twelve thousand cells.†)

The following paragraphs touching the views which are entertained by those who have witnessed, or shared in the ad-

\* Field, vol. ii. p. 171.

† Ibid. p. 170.

ministration of separate prisons in Europe, contain the latest intelligence within our present reach.

“So far from the intellectual powers becoming enfeebled, or mental aberration being in any measure induced, the faculties have been improved and strengthened, and in no single instance has insanity been produced. Although twenty-seven prisoners have been in custody, one or more of whose family have been deranged, or in some cases they themselves confined in lunatic asylums, yet so far from the treatment to which they have been subjected, whilst in custody, proving injurious, the mental faculties have not only been preserved, but in most cases surprisingly improved.”

[Report of Reading, (England,) New Gaol, on separate plan, by Rev. Mr. Field, Chaplain, in *Field's Work on Prison Discipline*, English edition, vol. ii. p. 79.]

The physician of the separate prison at Montpellier, in France, says—“Prisoners who were feeble, emaciated and languishing on arrival, have acquired in a short time, all the external signs of perfect health. Can any one longer doubt of the good effects of the system on those who are well,” he asks, “when it aids so powerfully in restoring to health those who are ill? Out of six hundred and fifty-eight men, and one hundred and sixty-six women, received in the prison, three men and one women have been put under treatment for mental derangement, but each one of these had shown signs of insanity before coming to the prison, and experience shows that the system of isolation, with its attendant visits, instead of increasing, has a tendency to moderate and quiet the predisposition to insanity.”—[Cited by Field, vol. ii. p. 377–8.]

Of the prison for the department of the Seine in France, Dr. De Balzac, Professor of the Royal College of Versailles, says—“The sanitary condition of the cellular prison is incomparably better than that of the prisons in common. Experience has shown that the system (of separation) is favorable to the health of the prisoners, and that it has no deleterious influence on their intellect.”—[Cited by Field, vol. ii. 378.]

Count CASPARIN, who has watched the progress and results



of the separate discipline in various French prisons, gives the following very decided opinion :—

“The great advantage—the inappreciable advantage of cellular imprisonment—that which should cause it to be adopted in spite of its inconveniences, if it were true that it had inconveniences even greater than those which have been conjured up—is, *the complete separation of prisoners*—the suppression of their mutual instruction in crime—the ignorance in which they are of their fellow-prisoners, and, in consequence, the impossibility of their recognizing one another and forming criminal associations on their discharge.

“Every government which, in the actual state of society and of the progress of social science, adopts any other than the separate system, will expose itself to the necessity of having before long to reconstruct its prisons.”—[Letter to George Sumner, Esq. dated Orange, (France,) November 10, 1846, and incorporated into Mr. Sumner’s letter to the mayor of Boston.]

M. Ducpetiaux, Inspector General of Belgian prisons, says, “The (separate) penitentiary system is clothed with a character and simplicity which defies all objection. It may be thus briefly summed up. It removes the prisoner from all dangerous influence, and subjects him to every influence favorable to his correction and amendment.”—[Speech at Brussels Congress, quoted by Field, vol. ii. p. 387.]

The authorities of the cellular prison at Tours, in France, assert most positively that in regard to the sanitary and moral education of the prisoners, the system of total separation, so violently and so unjustly attacked, produces the most remarkable results. Of the total number of one thousand six hundred and twenty-six persons who have entered the prison since its inauguration, sixteen only have been transferred to the hospital, and only one has died—a man of seventy, who was laboring under a chronic affection of the lungs. If we seek for the influence which it exercises on the intellectual faculties of the prisoners, we must recognize that far from disturbing their reason, it produces on their minds the most salutary results.

In proof of this, it is stated, that not a single case of insanity had occurred in the prison. The physician of the prison, (Dr. Haines,) says—"My own experience of this system serves to confirm the opinion twice solemnly announced by the Royal Academy of Medicine, that so far from menacing the existence, either physical or moral, of the prisoners, it is on the contrary, as compared with former systems, eminently proper to fortify and ameliorate both."—[Quoted by Field, vol. ii. p. 376.]

"The most perfect unanimity is found in the observations of the medical attendants of the separate prisons in France, some of whom have feared the effects of the discipline upon the health of prisoners. All acknowledge that sickness is found less frequently, and of shorter duration. Epidemic disorders, and sickness occasioned by the change of the seasons, rarely penetrate the cells, whilst under the old system the inhabitants of the prison never escaped. They frequently see prisoners weak, emaciated, and languishing, gradually recover all the outward signs of good health. Thus several physicians formally declare that the cellular system ought to be accepted as a benefit on account of health."—[M. Ardet, Honorary Inspector of the prisons of France, at the Frankfort Congress, 1846. —Cited by Field, vol. ii. p. 363.]

"We may venture to hope that it (the separate system,) is to become one of the most powerful instruments which it has pleased the Almighty to place in the hands of men for the reformation of the fallen."—[British and Foreign Medical Chirurgical Review, Oct. 18, 1848.]

It does not enter into the design of this paper, to condemn or depreciate the congregate system of prison discipline. Its merits and advantages have not been concealed by its friends, and if they had simply advocated their own views, or had fairly and ingenuously exposed what they might regard as the errors or mischiefs of ours, all controversy would have been avoided. It may be a very harmless folly for one to trumpet his own praises and achievements, but when he nurses his self-conceit at his neighbor's expense, or traduces the good name of another to emblazon his own, his weakness will not excuse him.

We make these remarks to prevent any misconstruction of our object, in citing authorities against the congregate discipline. We know that many inquirers on the subject, have been led to suppose that no doubts are entertained of its complete adaptation to all the purposes of a penitentiary. That such doubts are not few, and that they are emphatically expressed, sufficiently appears from the following:

The grand jury of the court of oyer and terminer for the city of New York, in a very elaborate report upon, or presentation of the condition of the prison on Blackwell's Island, so lately as January 8, 1849, use the following language:

"Allowing intercourse between the prisoners has been for many years the evil of prisons all over the world, and has arrested the attention of legislatures and philanthropists in every Christian country. It has been the boast of our country, that we have taken the lead in reforming this evil; and the two systems of prison discipline, known as the Auburn and Philadelphia systems, which have claimed to effect this purpose, have been the subject of comment and admiration at home and abroad.

"The strife between them has been—which has the most effectually answered the great purpose of preventing this most injurious practice of intercourse amongst the prisoners. In every large prison in our country, this object seems to be the main one. In the nations of Europe, where prison reform has attracted any attention, this object has still been the great and leading one. This has arisen from the all-pervading conviction, that the mutual contamination of prisoners counteracts every infliction of punishment for crime.

"In all the prisons alluded to, this object has been attained in a greater or less degree; but in our penitentiary, which is built on the plan of the Auburn prison, it is totally neglected. There is scarcely an attempt to prevent the most free and full intercourse among the prisoners; when they retire to rest they are not even confined in separate cells. In a great number of cells, two prisoners are confined together, both sleeping upon one bunk, which is about two feet in width. In the day time,

they are collected in squads, and, whether idle or at work, have constant opportunities for conversation.

"The sick are huddled together in large numbers, where conversation is as free as air, both by day or night. The invalid, the aged, the infirm, the vagrant, the criminal and half lunatic, are confined together, and are allowed the most unrestrained intercourse at all times. And the penitent, dying inmates of that prison, have no means of escaping the obtrusion upon them of the discourse and society of the most reckless and abandoned.

"In short, all the evils of confinement in common with unrestrained intercourse, which have attracted the notice of almost every Christian community for very many years, exist in full vigor in our own penitentiary, have long existed without awakening any spirit of reform in our city authorities, are daily corrupting the people, and rendering of no avail the vigilance of the police, or the action of a criminal court; and all this in open and palpable violation of the law of the land, which declares that prisoners shall be kept separate and distinct from each other, and all conversation between them shall be prevented."

This provision of law is impracticable, as we have shown in the progress of the present discussion, and if the evil is to be overcome at all, it must be by resorting to individual separation.

Such a state of things as the foregoing passage from an authoritative public document reveals to us, must convince us that we have something to do besides holding conventions and firing pamphlets at each other. If we cannot agree on principles, let each man carry out his own, and rather adopt either system than suffer a relapse into all the horrors of free, indiscriminate association night and day.

"Experience has shown the impossibility of keeping silence in society, and the certain effect of the law of silence is to encourage hypocrisy and teach fraud."—[Third Report of the New York Prison Association, Second part, p. 94.]

"M. Ducpetiaux, inspector-general of Belgian prisons, stated at the Brussels congress in 1847, that sixteen years trial, had resulted in showing the complete inefficiency of the Auburn (congregate) system. Silence has been imposed on the criminals, and the persons employed in the prison have been charged to maintain strictly the application of this severe rule. This new trial was not more happy than the former. It seemed only to show the impossibility of forcing human nature—the absurdity of a system which, under the pretext of removing the inconveniences of solitude, has the effect of isolating them completely in the midst of their companions."—[Field, vol. ii. p. 387.]

"I regard the (congregate) system as radically bad. The association of the prisoners together, under *any* circumstances, for *any* purposes, whether of work or instruction under any restraint or prohibition, is, in my opinion, utterly repugnant to the ends either of reformation or the deterring of others."—[The Lord Justice Clerk of Scotland—cited in Field, vol. ii. p. 268.]

"The silent (or congregate) system, I believe to be impracticable, and very inadvisable if practicable. Strict prohibition may be made, but can never be enforced." (Baron Alderson, *ibid.*)

"I must confess my opinion is unfavorable to the plan of prisoners working together, even under a strict prohibition of communicating with each other by words or signs; and for this reason, I think to keep it in action demands such a constant control over the individual by those who guard him, that his mind is kept in an irritated and hostile state; and as I look upon imprisonment as mainly valuable for its reformatory powers, I think it is of immense importance that nothing should be done which would place the mind of the criminal in a hostile state, because it is quite evident, that if those who are attempting to cure him can form an alliance with his mind, the process of cure is likely to go on much more rapidly and successfully than *where he is striving to go in one direction and*

*they in another."* [M. D'Hill, Q. C. cited by Field, vol. ii. p. 269.]

"You may increase the number of your keepers, but you cannot prevent these communications. It would be necessary for that purpose, that your inspectors (overseers) should be as Janus, and unfortunately the head of Janus is a mythological fiction. As soon as the inspector's head is turned, the tongue of the prisoner is turned also. **IT IS THE FUNDAMENTAL DEFECT OF THE SYSTEM.**" [M. de Jagemann, Conseiller du Ministère de la Justice, à Carlsruhe, *ibid.*]

These extracts will serve to show the direction which public opinion takes on the subject, and if any would be more fully informed, they are referred to the voluminous and valuable work from which most of these have been derived.\*

WE have firm confidence, that the principle of individual and constant separation will ultimately be recognized as fundamental in all systems of penitentiary discipline. It stands out too prominently in the annals of prison-reform to be overlooked, and carries with it so much of sound reason and practical wisdom, that its triumph is put beyond a question. Indeed, the introduction of this principle and its practical application to the correction and reformation of a body of convicts; is the grand era in the history of prisons.

In the modes of punishing offenders by incarceration, whether in ancient or modern days, we find improvements from time to time in the administration of the discipline. The ear of some John Howard or some Elizabeth Fry has been opened to the cry of prison abuses, and legislatures have been constrained to provide remedies for evils which were working mischief to society, at least as much and as surely as to

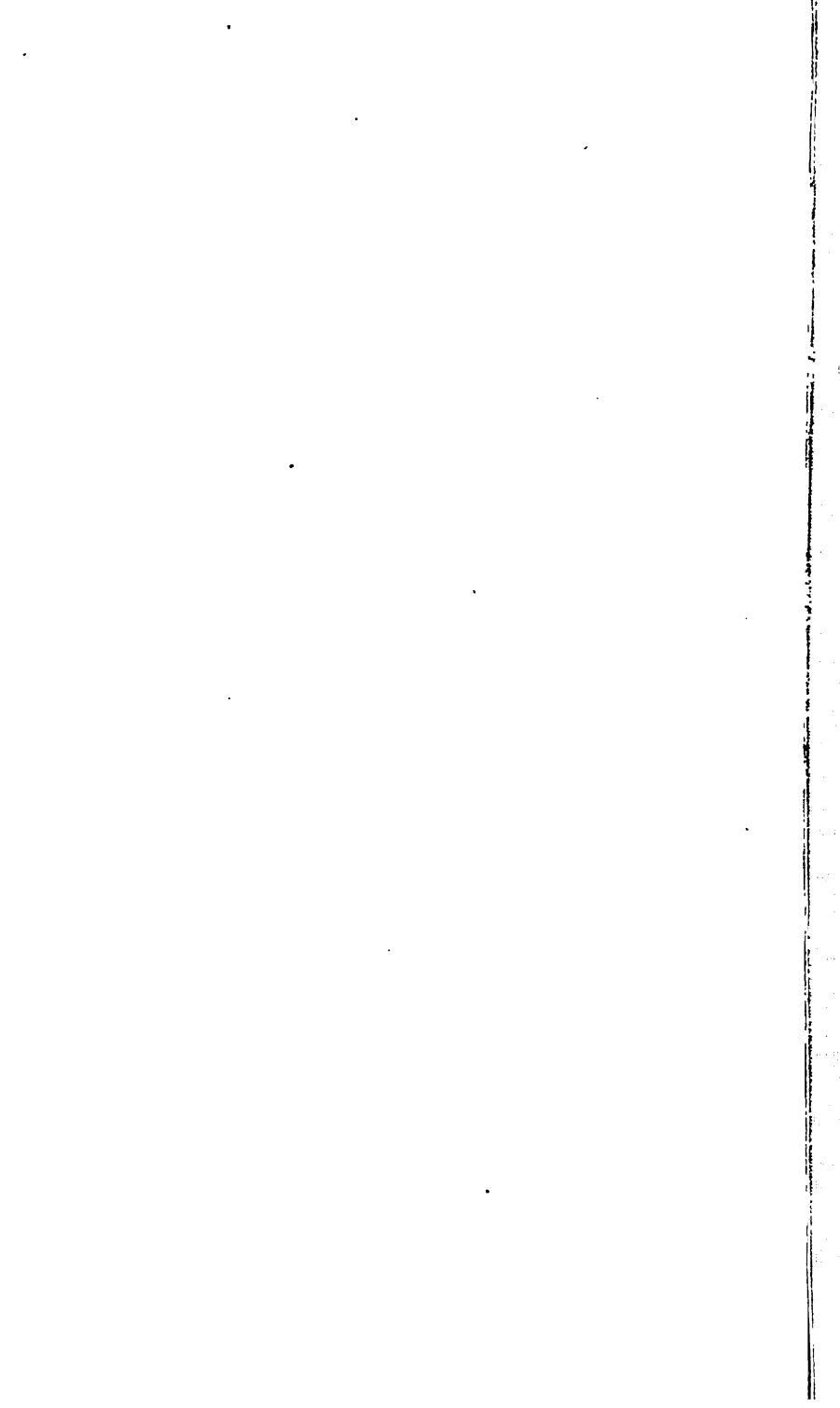
\* *Prison Discipline, and the Advantages of the Separate System of Imprisonment.* By the Rev. J. Field, M. A., Chaplain to the County Gaol at Reading, 2d edition, London, 1848, 2 vols. 8vo. pp. 900. See also Review of Mr. Field's book, from the *British and Foreign Medico-Chirurgical Review* for October 1848, republished in the *Pennsylvania Journal of Prison Discipline*, No. 1, Vol. IV. January 1849, p. 14-27.

the culprit. But these remedies, the very best and most efficacious of them, did not contemplate any change in convict-society, except to restrict or regulate it. Indeed, they did not look to such a change as at all necessary or practicable. The promiscuous, unrestrained intercourse of all grades, ages and classes, day and night, was too obviously pernicious to be tolerated, when attention was drawn to it; and, in process of time, it was restricted to the day, some sort of classification or separation being enforced by night, at least so far as the construction and space of prisons would allow of it. It was a great advance upon this improvement when the freedom of intercourse by day was checked by inspection, and still greater when it was prohibited altogether; for though this rigid interdiction of all communication was, and must ever be, quite imperfectly enforced and attended with many serious evils, it certainly limits the means and opportunities of mutual corruption and enhances in no small degree the severity of the confinement. But, it will be observed, that by none of these processes is **THE CONVICT-SOCIETY DISSOLVED**. The idea of a community with habits and sympathies, principles and purposes substantially similar, is kept before the mind. Amongst two or three hundred rogues in one hall or yard, shades of individual character soon fade out of sight. The best is bad enough to be a convict, and the worst is nothing worse than a convict. We do not say that such a community is entirely unsusceptible of ameliorating and reforming influences while together, but we affirm, without fear of contradiction, that their being in a **STATE OF SOCIETY** is a formidable obstacle to the introduction and stay of such influences; and unless all the teachings of divine wisdom and the lessons of human experience and observation are at fault, **ASSOCIATION** is not more truly the provocation of moral disease than **SEPARATION** is an essential element of its cure.

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